United States Court of Appeals
for the Second Circuit

JOINT APPENDIX

76-6137

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-6137

W. J. USERY, Secretary of Labor,
UNITED STATES DEPARTMENT OF LABOR,
Appellee,

—against—

INTERNATIONAL ORGANIZATION OF MASTERS MATES AND PILOTS, INTERNATIONAL MARITIME DIVISION, ILA, AFL-CIO,
Appellant.

UNITED STATES COURT OF APPEALS
FILED
OCT 29 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

JOINT APPENDIX

MARVIN SCHWARTZ
Attorney for Appellant
243 Waverly Place
New York, N. Y. 10014
(212) 691-2251

ROBERT B. FISKE, JR.
United States Attorney for the Southern District of New York
Attorney for Appellee
United States Courthouse
Foley Square
New York, N. Y. 10007

PAGINATION AS IN ORIGINAL COPY

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V. 5031-- W.J. USERY, SEC'Y OF LABOR, U.S. DEPT. OF LABOR-vs- INT'L ORGANIZATION OF MASTERS, MATES, PILOTS, etc.

0. 110 Rev. Civil Docket Continuation (PAGE # 5) (MOTLEY, J.)

DATE	PROCEEDINGS	Date Of Judgment
04-15-76	Filed Judgment and Order-- that the 1971 election of all International officers of the deft. union, International Organization of Masters, Mates and Pilots and all the officers of the deft union's Offshore Division is declared void- and that a new election under the supervision of the Secretary of Labor shall be conducted no later than 12-31-76 as indicated. MOTLEY, J. Judgment entered 4-15-76. Clerk (m/n)	
05-05-76	Filed Order-- that this court's order signed on 4-14-76 be amended nunc pro tunc to reflect that fact that the date of signature by this court was 4-14-76-- and that this case shall be reinstated to the list of open cases before this court until the new election mandated in such order has been certified as indicated. So ordered- MOTLEY, J. (m/n)	
05-05-76	Filed deft's notice of appeal to USCA from all of the Judgment and Order entered on 04-15-76. Copy mailed to: U.S. Attorney for the SDNY (ent. 5-6-76)	
05-05-76	Filed undertaking for costs on appeal in the sum of $250.00- United States Fidelity and Guaranty Company	
05-07-76	Filed pltff's notice of entry of a copy of a Judgment and Order entered on 4-15-76 and a copy of another Order entered on 5-5-76	
05-17-76	Filed notice that the record on appeal has been certified and transmitted to the USCA this day.	
5-11-76	Filed stipulation that certain document may be included in the record on appeal	
6-30-76	Filed Govts. affdvt. & order to show cause why an order should not be entered compelling the union to comply immediately with the directives of the Secty.set forth in Mr.Gumpertz June 15,76 letter...Ret. 7-1-76 at 2 P.M...Motley,J....	
07-06-76	Filed Order - For the reasons stated - The arrangement described above permitting the three International officers to become the three principal officers of the Offshore Division is declared invalid & the union shall not adhere to any provision in its International Constitution & its Offshore Division's By-Laws,etc, as indicated. MOTLEY,J	
07-12-76	Filed transcript [illegible] dated 7-1-76	
07-15-76	Filed deft's affdvt. and notice of motion for an order that this court's order entered 7-6-76 involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, etc. ... Ret. 7-26-76	
07-15-76	Filed deft's memorandum.	
07-15-76	Filed deft's affdvt. of Burton M. Epstein in opposition to certain aspects of relief sought by pltff.	
08-10-76	Filed Memo Endorsed - on motion filed 7-15-76 - . The attached motion, etc. is granted,Submit Order on notice.So Ordered,MOTLEY,J m,notice	
08-31-76	Filed undertaking for costs on appeal in the sum of $250.00- United States Fidelity & Guaranty Co.	
08-31-76	Filed Deft's NOTICE OF APPEAL to USCA 2nd Circuit from order of Motley,J entered 7-6-76. m-n to: Robert B.Fiske,Jr, US Atty One St. Andrews Plaza,NYC 10007.	
09-29-76	Filed Amendment to order entered July 6,1976***there is substantial ground for difference of opinion***an immediate appeal from said order may materially advance the ultimate termination of this litigation***So Ordered Motley,J.	
09-29-76	Filed stip.that certain listed documents be transmitted to the U.S.Court of Appeals and shall constitute the record...	

CONTINUED ON PAGE NO. 6.

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72 CIV 5031 [illegible] ETC. ETAL VS: INTERNATIONAL ORGANIZATION OF
MASTERS, MATES AND PILOTS, INTERNATIONAL MARITIME DIVISION,

MOTLEY, J

DATE	PROCEEDINGS	Date Order o Judgment Not
09-29-76	Filed Notice that record on Appeal has been certified and transmitted to the USCA 2nd Circuit this day.	
10-06-76	Filed stipulation between both parties that the listed documents as indicated shall be transmitted to the USCA as a supplement to the record heretofore transmitted for the purposes of appeal.	
10-6-76	Filed notice that the 1st. supplemental record on appeal has been transmitted to the U.S.CCA.	
10-12-76	Filed true copy of USCA order with opinion affirming the District Court's order and judgment with costs to be taxed in the sum of $687.16 in favor of pltff-appellee and docketed as Judgment # 76,912 on 10-12-76. (m/m)	

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n-2217

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----------------------------------x
W.J. USERY, Secretary of Labor, :
United States Department of Labor,
Plaintiff, : **ORDER TO SHOW CAUSE**
- v - : 72 Civ. 5031 (CBM)
INTERNATIONAL ORGANIZATION OF
MASTERS, MATES AND PILOTS, :
INTERNATIONAL MARITIME DIVISION,
ILA, AFL-CIO, :
Defendant. :
-----------------------------------x

A judgment and order ("judgment") having been entered on April 15, 1976 declaring the 1971 election of the defendant union's International officers and Offshore Division officers void; and said judgment having further ordered that a new election under the supervision of the Secretary of Labor be conducted for said officers in accordance with the provisions of 29 U.S.C. § 482(c); and said judgment having further ordered that the new election be completed no later than December 31, 1976 (unless a run-off is necessary in which case the Secretary is authorized to extend the completion date); and the Court having retained jurisdiction over this matter until the new election has been certified in accordance with 29 U.S.C. § 482(c); and the defendant union having taken an appeal of said judgment; and, as mandated by 29 U.S.C. § 482(d), no stay of the court-ordered election being permitted; and

The Secretary of Labor, through his delegee, Gerard Gumpertz, having conducted a pre-nomination/pre election conference on May 24, 1976 at which time ground rules for the new election were discussed; and Mr. Gumpertz having written

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to the union officials three times requesting compliance with directives related to the forthcoming supervised election, the latest by letter dated June 15, 1976 wherein certain ground rules and the timing for each of the procedures involved in the new election were set forth and compliance by the union with certain stated requirements requested not later than June 23, 1976; and the union having failed to comply with substantially all the Secretary's requirements by the close of business June 23, 1976, having instead by letter of June 22, 1975 taken issue with various directives of the Secretary;

NOW on motion of Robert B. Fiske, Jr. United States Attorney for the Southern District of New York, attorney for the plaintiff herein, and upon the annexed affidavit of Assistant United States Attorney Dennison Young, Jr., together with the exhibits annexed thereto, and there appearing good cause therefore, it is hereby

ORDERED that the defendant union shall show cause, if there be any, before this Court at 2:00 P. M. on ~~June~~ July 1, 1976 in Room 2703, United States Courthouse, Foley Square, New York, New York why an order should not be entered compelling the union to comply immediately with the directives of the Secretary set forth in Mr. Gumpertz' June 15, 1976 letter; compelling the union to comply with all reasonable directives of the Secretary that may issue hereafter; and requiring the union and each of its officers and representatives not to delay or otherwise interfere with the election schedule set forth by the Secretary; and it is further

CBM
CBM
CBM

ORDERED that service of this order together with the annexed documents shall be sufficient if a copy thereof

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is served by a representative of the United Stated Department of Labor or a representative of the office of the United States Attorney for the Southern District of New York on a person of suitable age and discretion at the office of Marvin Schwartz, P.C., 243 Waverly Place, New York, New York 10014, attorney for the defendant herein, no later than 5:00 P. m. on June 30, 1976.

Dated: New York, New York
June 29, 1976

s/ Constance Baker Motley
CONSTANCE BAKER MOTLEY
U. S. D. J.

DY:lq
n-2217

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---------------------------------x

W. J. USERY, Secretary of Labor, :
United States Department of Labor,

Plaintiff, : **AFFIDAVIT**

- v - : 72 Civ. 5031 (CBM)

INTERNATIONAL ORGANIZATION OF
MASTERS, MATES AND PILOTS, :
INTERNATIONAL MARITIME DIVISION,
ILA, AFL-CIO, :

Defendant. :

---------------------------------x

DENNISON YOUNG, JR., being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Robert B. Fiske, Jr., United States Attorney for the Southern District of New York and as such I am in charge of this action.

2. I submit this affidavit in support of the plaintiff's motion for an order to show cause a) why the defendant union ("union") should not be compelled to comply immediately with the supervisory directives of the Secretary of Labor issued heretofore in connection with the new election previously ordered by this Court for certain of the union's officers; b) why the union should not be compelled to comply with all reasonable supervisory directives of the Secretary issued hereafter; and c) why the union and each of its officers and representatives should not be ordered not to delay or otherwise interfere with the election schedule set forth by the Secretary.

3. On April 15, 1976 a Judgment and Order ("Judgment") was entered in this action whereby

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n-2217

A) the 1971 election of the defendant union's International officers and its Offshore Division's officers was declared void;

B) a new election under the Secretary of Labor's supervision was ordered to be conducted in accordance with Section 402 of the Labor Management Reporting and Disclosure Act (the "Act"), 29 U.S.C. §482(c); and

C) the new election was ordered to be completed no later than December 31, 1976 (unless a run-off is necessary in which case the Secretary was authorized to extend the completion date).

By that Judgment the Court also specifically has retained jurisdiction until the new election has been certified in accordance with 29 U.S.C. §482(c). A copy of the Judgment is annexed hereto as Exhibit A.

4. I am informed by the Department of Labor of the following:

A) On May 24, 1976 the Secretary of Labor, through his delegee, Gerard Gumpertz, Deputy Area Administrator for the New York Area Office of the Labor-Management Services Administration, conducted a pre-nomination/pre-election conference with the union and other interested persons to discuss the ground rules for the new election.

B) Subsequent to the conference Mr. Gumpertz exchanged a series of letters with the union. Mr. Gumpertz requested therein immediate compliance with at least a few specific directives discussed at the conference, while the union insisted on waiting for a more detailed letter from Mr. Gumpertz regarding the ground rules generally.

Annexed collectively hereto as Exhibit B are those letters.

C) By letter of June 15, 1976 Mr. Gumpertz, after consultation with officials at the Department of Labor in Washington, D.C., established the ground rules for the forthcoming supervised election and set the target dates for each of the procedural steps involved in this lengthy election process. A copy of the June 15, 1976 letter is annexed hereto as Exhibit C. This letter called upon the union to make a number of decisions regarding certain essential matters and to do so by June 23, 1976. The union's seagoing membership had to be advised promptly of the forthcoming election and of their opportunities to participate in it in order to meet the targeted scheduling and this could not be accomplished until the union informed the Department of Labor of its decisions.

D) By letter of June 22, 1976, the union advised Mr. Gumpertz, however, that it could not and would not decide any matter as requested by the Secretary. Rather it took the position that only the membership at large could make the decisions in question and that the instructions or suggestions contained in Mr. Gumpertz' letter were merely those of the Department of Labor and not orders of a Court. Additionally it itemized certain objections to a number of instructions or points raised by the Secretary in Mr. Gumpertz' letter. A copy of the union's June 22, 1976 letter is annexed hereto as Exhibit D.

5. As then Circuit Judge Stevens pointed out in _Brennan_ v. _Local 551_, _United A., A. & A. Workers of A. Inc._, 486 F. 2d 6 (7th Cir. 1973) the Secretary is the one who is authorized to make supervisory decisions. His authority is exceptionally broad and his decisions made in connection

therewith must be heeded by the union. Unless the Secretary's decisions and directives are arbitrary and capricious, the union must consider them conclusive.

If a union could challenge every ruling by the Secretary in a separate court proceeding, it could effectively delay the new election and frustrate the supervisory authority of the Secretary, that supervisory expertise which Congress decided was essential to remedy a tainted election. Such interference should not be tolerated for it can only add an extraordinary burden on the Court which was not at all envisioned in the scheme of the Act.

What is apparent here is that in addition to delaying the court-ordered election the union wants this Court to order it to obey the Secretary's directives thereby giving those directives the imprimatur of "court-orders". This presumably would help the union defend feared lawsuits from disgruntled members which may arise from adhering to the Secretary's instructions without challenge. It is submitted that such orders of the Court should not be necessary. Issue having been joined, however, it is now important that this Court issue the appropriate orders to ensure that the Secretary's supervisory instructions will be obeyed on pain of contempt if necessary.*

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* In the Secretary's Reply Memorandum submitted on his summary judgment motion herein, the scope of the Secretrary's supervisory authority is discussed more fully (Point VII). Additionally, the Secretary has further elaborated on the subject in his brief submitted to the Court of Appeals for the Second Circuit (Point III). As this Court may know, the union appealed from the judgment of this Court entered April 15, 1976. Oral argument was heard on June 18, 1976 and the matter is still pending.

For the convenience of the Court, we submit herewith additional copies of the Secretary's summary judgment motion papers and his appellate brief. The union has previously been supplied with copies. We also submit copies of the union's papers submitted in response to the summary judgment motion as well as its appellate briefs and copies of the IOMM&P Constitution (January 20, 1975) and the Offshore Division By-Laws (October 1, 1970 - as amended) pursuant to which the court-ordered election is being conducted, insofar as the provisions therein are lawful and practicable.

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If the union were permitted to delay the supervised election by defying the Secretary's instructions, as it is doing here, not only would it be preventing the tainted election from being remedied quickly, but, de facto, it also would be causing the court-ordered election to be stayed pending appeal -- which is directly contrary to section 482(d) of the Act. It is respectfully urged that this Court not permit this to happen.

6. It is evident, it is submitted, that the instructions contained in Mr. Gumpertz' letter of June 15, 1976 are eminently reasonable and their review, with the exception of perhaps one, should not even have been forced on this Court by the union. We have prepared a brief summary of the points raised therein and disputed by the union with a background explanation for each and annex this "Analysis" hereto as Exhibit E.

7. The one issue that perhaps deserves further comment at this point relates to certain illegal provisions of the union's International Constitution and Offshore Division By-Laws. As structured therein, the three International officers - who are elected by a vote among all the members of the union - automatically become the three top officers of the Offshore Division. No separate election among the members of the Offshore Divison only is held for the Offshore Division's Executive Officer, Assistant Executive Officer and Financial Officer and this, the Secretary has argued, is violative of the Act. The illegality of this scheme is fully described in the Secretary's appellate brief (pp. 36-43) as well as in the Secretary's Reply Memorandum

submitted on the summary judgment motion (Point VII) and the Court is respectfully referred thereto.*

Procedurally, however, it is important to note that on this issue the union had originally moved for summary judgment. While the Secretary briefed the issue in his reply memorandum, he also suggested that a decision thereon was not necessary to void the 1971 election - all that was necessary for that was the Newsletter - nor was it clear that a decision on it would even be necessary during supervision. Unless and until the union defied the Secretary's supervisory directives to modify this illegal scheme, there was no certainty the Court would be called upon to rule on it.

This Court's restraint seems to have been an exercise in futility. The union appealed this Court's decision not to rule on this issue and now also refuses to modify the scheme pursuant to the Secretary's supervisory instruction. While the Secretary suggested to the Court of Appeals that it could decide this controversy and indeed urged it to do so, since there is nothing more than a matter of law involved, there is no assurance that it will be decided quickly or, for that matter, at all. Accordingly, for this election not to be delayed further, it is important for this Court to declare this scheme illegal now and to order the union to adhere to the Secretary's instructions with respect to allowing the Offshore Division - a separate labor organization with its own executive officers -to elect its own officers without the intrusion of non-members' votes. The

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* A fair reading of the Act we submit requires that labor organizations elect their "own representatives" by a vote among their own "members in good standing" alone. See eg. the preamble to the Act, 29 U.S.C. §401(a) and Sections 481(a), (b) and (d) of Title 29 (those sections mandating that elections be held).

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union should not be permitted by its own defiance to de facto stay the court-ordered new election.

8. In short, the union has now defied the Secretary's supervisory instructions with respect to the court-ordered election of its officers and unless the instant order to show cause is signed and the Court instructs the union to obey the Secretary's directives, the election timing will be seriously jeopardized causing it to run beyond the deadline embodied in the Court's order, if that has not already happened. Continued delay necessarily deprives the union members of a prompt remedial election, a delay which is precisely what Congress sought to avoid.

9. No previous application has been made for the relief sought herein.

WHEREFORE, it is respectfully prayed that the annexed order to show cause be signed.

DENNISON YOUNG, JR.
Assistant United States Attorney

Sworn to before me this
29 day of June, 1976.

NOTARY PUBLIC

RALPH L LEE
Notary Public, State of New York
No. [illegible] Queens County
Term Expires March 30, 197[illegible]

A 13 1 0 Wilfred

DY,JR.icf

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - x

W. J. USERY, Secretary of Labor, :
United States Department of
Labor, :

Plaintiff, :

-v- :

INTERNATIONAL ORGANIZATION OF :
MASTERS, MATES AND PILOTS,
INTERNATIONAL MARITIME DIVISION, :
ILA, AFL-CIO,
:
Defendants.
- - - - - - - - - - - - - - - - - - x

JUDGMENT AND ORDER

72 Civ. 5031 (CBM) wa

U.S. DISTRICT COURT
FILED
APR 15 1976
S.D. OF N.Y.

The above action having been brought by the Secretary of Labor of the United States Department of Labor, (the "Secretary") pursuant to Section 402 of the Labor Management Reporting and Disclosure Act, 29 U.S.C. §482, seeking to void the 1971 election of all International officers of the defendant union, International Organization of Masters, Mates and Pilots and all the officers of the defendant union's Offshore Division and to have a new election for those positions ordered conducted under the supervision of the Secretary and

The Secretary having moved for summary judgment on the issues involved herein, and

The Court on March 17, 1976 having handed down a Memorandum Opinion granting summary judgment to the plaintiff, Secretary of Labor,

NOW, on motion of Robert B. Fiske, Jr., United States Attorney for the Southern District of New York, attorney for plaintiff herein, it is hereby

RALPH L. LEE
[illegible] of New York
[illegible] County
[illegible]

DY,JR.:lm

ORDERED, ADJUDGED AND DECREED that:

(1) the 1971 election of all International officers of the defendant union, International Organization of Masters, Mates and Pilots, and all the officers of the defendant union's Offshore Division is hereby declared void; and

(2) a new election under the supervision of the Secretary of Labor shall be conducted for all International officers of the defendant union and all officers of the defendant union's Offshore Division in accordance with Section 402(c) of the Labor Management Reporting and Disclosure Act, 29 U.S.C. §482(c); and said new election shall be completed no later than December 31, 1976, provided, however, that in the event any run-off election becomes necessary the Secretary shall have the authority to determine the date by which said run-off election shall be completed; and

(3) the Court shall retain jurisdiction over this matter until said new election has been certified in accordance with Section 402(c) of the Labor Management Reporting and Disclosure Act, 29 U.S.C. §482(c).

Dated: New York, New York
March 25, 1976

CONSTANCE BAKER MOTLEY
United States District Judge

Judgment entered this
15 day of April, 1976

Raymond F. Burghardt
Clerk

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By
Deputy Clerk

RALPH I. LEE
Notary Pub[illegible] State of New York
No. 41-2[illegible] Queens County
Term Expires [illegible]

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10007

CERTIFIED - RETURN RECEIPT REQUESTED

June 3, 1976

In Reply Refer To:
30-4167

Captain Frank Scavo, President
International Organization of
Masters, Mates and Pilots
39 Broadway
New York, N. Y. 10004

Dear Captain Scavo:

This pertains to a conference held at the office of the International Organization, attended by Captains Robert J. Lowen and Gerald Johnson, Burton Epstein, Esq., as well as by Compliance Officers Richard Montrose and Rona Sokolsky from this office.

As Mr. Montrose told the union representatives, we will in the very near future forward a letter to all attendees at the pre-election conference, in which we will list the major ground rules discussed at that conference.

Pending the issuance of that letter, it is essential that certain steps be taken immediately so as not to delay the schedule for nomination and election discussed at the pre-election conference. As you know, the schedule is designed to comply with the Federal District Court order regarding completion of the election by December 31, 1976.

Specifically, it is necessary that the nomination notice to the membership be mailed on or about June 21, 1976. This notice must contain definitive information as to the alternate ways of nominating candidates for the various offices. Thus, you should decide immediately whether a special convention for the purpose of nominations will be held so that the nomination notice may be worded accordingly. No ruling was made at the pre-election conference that would have any impact on your decision regarding the convention, except our expressed opinion that such a convention would be entirely acceptable to this Department.

30-4167.

Once you have made the decision regarding the special convention, we request that you begin immediately to draft a nomination notice to the membership so that it may be mailed according to schedule. Please feel free to consult with Compliance Officer Montrose regarding the composition of this notice.

Your prompt acknowledgement of this letter will be appreciated.

Very truly yours,

Gerard Gumpertz
Deputy Area Administrator

GG/lrl

cc: Captain Robert J. Lowen,
Secretary-Treasurer

Captain Gerald Johnson,
Executive Vice President

Burton Epstein, Esquire

Dennis Young, Jr., Assistant U.S. Attorney
Southern District of New York

Rudolph DeMeo, Esquire
U.S. Dept. of Labor,
Solicitor of Labor

NYRO

RECEIPT FOR CERTIFIED MAIL—30¢ (plus postag

SENT TO

STREET AND NO.

P.O., STATE AND ZIP CODE

POSTMARK OR DATE

OPTIONAL SERVICES FOR ADDITIONAL FEES

RETURN RECEIPT SERVICES	1. Shows to whom and date delivered	15¢
	With delivery to addressee only	65¢
	2. Shows to whom, date and where delivered	35¢
	With delivery to addressee only	85¢
DELIVER TO ADDRESSEE ONLY		50¢
SPECIAL DELIVERY (extra fee required)		

No.

PS Form 3800
Apr. 1971

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

See other

LAW OFFICES
MARVIN SCHWARTZ, P. C.
243 WAVERLY PLACE
NEW YORK, N. Y. 10014

MARVIN SCHWARTZ
BURTON M. EPSTEIN

(212) 691 2290

June 3, 1976

Mr. Gerard Gumpertz
Deputy Area Director
United States
Department of Labor
Labor-Management
Services Administration
26 Federal Plaza
New York, New York 10007

Re: Usery v. IOMM&P
72 Civ. 5031

Dear Mr. Gumpertz:

At the meeting held on May 24, 1976, you advised that within a few days you would be forwarding to the union office, to the undersigned and to other appropriate parties, the procedures that the Department of Labor was going to formulate with respect to the election that was ordered by Judge Motley in the above captioned matter. These procedures were to include, among other things, a listing of the Executive Officers of the MM&P's Offshore Division which the Department considered were necessary to be on the ballot.

To date, we have received no such letter from you and I am informed by the MM&P office at 39 Broadway that they have received no such letter from you either.

I so advised Mr. Montrose at the meeting held at the MM&P on Tuesday, June 1, 1976, and Mr. Montrose indicated to me that the letter would be forthcoming within a few days.

As you will recall, it was indicated to you at the May 24, 1976 meeting that all parties, naturally, were reserving their rights to protest with respect to anything that the Department might formulate concerning the election.

Please be good enough to promptly forward to us and to all the other appropriate parties your letter concerning the MM&P

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election, so that it may be reviewed for consideration of what action, if any, should be taken with respect thereto.

Very truly yours,

MARVIN SCHWARTZ

By Burton M. Epstein
Burton M. Epstein

BME:EML

CC: Captain Frank T. Scavo
Captain Gerald L. Johnson
Captain Robert J. Lowen

A 19

LAW OFFICES
MARVIN SCHWARTZ, P. C.
243 WAVERLY PLACE
NEW YORK, N. Y. 10014

MARVIN SCHWARTZ
BURTON M. EPSTEIN

(212) 691-2280

June 4, 1976

Mr. Gerard Gumpertz
Deputy Area Director
United States
Department of Labor
Labor-Management
Services Administration
26 Federal Plaza
New York, New York 10007

Re: Usery v. MM&P
72 Civ. 5031
Your File 30-4167

Dear Mr. Gumpertz:

I have received a copy of your letter to Captain Scavo dated June 3, 1976 with reference to the above captioned matter. I trust that you have by now received my letter to you of June 3.

Your comments about forwarding a letter concerning the ground rules for the election "in the very near future" is at variance with Mr. Montrose's advice at the June 1, 1976 meeting that such letter would be forthcoming within a few days, and was, naturally, at variance with your prior advice at the May 24, 1976 meeting that such letter would be forthcoming within a few days.

In my letter to you of June 3, 1976, I have pointed out the necessity of a prompt receipt of your "ground rules" letter. Your delay in furnishing this material is prejudicing any parties who might wish to raise an objection to the procedures and other matters that the Department is formulating with respect to the election.

Very truly yours,

MARVIN SCHWARTZ

By Burton M. Epstein
Burton M. Epstein

BME:EML
CC: Captain Frank T. Scavo
Captain Gerald L. Johnson
Captain Robert J. Lowen

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U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10007

June 8, 1976

Burton M. Epstein, Esq.
Co-Counsel
International Organization of Masters,
Mates and Pilots
243 Waverly Place
New York, N. Y. 10014

Dear Mr. Epstein:

This letter is to acknowledge your letters of June 3 and June 4, 1976, and to advise that the letter relating to the pre-nomination/pre-election conference held May 24, 1976, will be sent to you as expeditiously as possible early next week.

While you acknowledge my letter to Captain Scavo, dated June 3, 1976, you do not mention that it advised Captain Scavo to proceed with the business of calling the special convention and putting in to motion the preparation of the nomination notice.

It is not necessary to wait for the letter setting out the ground rules before making these decisions since they must be made by the union as early as possible so as to remain within the time limit established by the Federal Court.

Very truly yours,

GERARD GUMPERTZ by R. [illegible], Acting AA
Deputy Area Administrator

cc: Captain Frank T. Scavo
Captain Gerald L. Johnson
Captain Robert J. Lowen
Dennison Young, Jr., AUSA
Rudolph DeMeo, Esq.

RM:art

Blind cc: BET
NYRO

NYAO File Copy

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LAW OFFICES
MARVIN SCHWARTZ, P. C.
243 WAVERLY PLACE
NEW YORK, N. Y. 10014

MARVIN SCHWARTZ
BURTON M. EPSTEIN

(212) 691-2250

June 11, 1976

Mr. Gerard Gumpertz
Deputy Area Administrator
U.S. Department of Labor
Labor-Management Services
Administration
26 Federal Plaza
New York, New York 10007

Dear Mr. Gumpertz:

I am baffled by the contents of your letter dated June 8, 1976.

You acknowledge that you have still not sent to the Union and other interested parties the Department's letter containing the procedures that the Department of Labor was going to formulate with respect to the election, which procedures were to include, among other things, a listing of the officers of the MM&P's Offshore Division which the Department considered were necessary to be on the ballot.

I remind you that at the meeting held on May 24, 1976, you advised that within a few days after the meeting you would be forwarding to the Union office, to the undersigned and to the other appropriate parties, such a letter. You will also recall that at the May 24th meeting all parties present advised that they were reserving their rights to protest with respect to anything that the Department might formulate concerning the election. I reminded you of this in my letters of June 3 and 4, 1976.

Consequently, I cannot understand your statement that the preparation of a nomination notice can now be put into motion when the Department has not as yet advised what their formulation for the election is, and, naturally, no individual or the Union has had an opportunity to raise any objection they might have with respect thereto

It is your delay in furnishing the letter which will lead to any time problems that may arise. I certainly hope that you do not think that by delaying your letter you will be able to foreclose the rights of any party to raise a protest with respect to your formulation concerning the election under the pressure of the time limit established by the Federal Court. Any such time pressure is being created by you and your failure to furnish the letter within the time frame you initially indicated.

Very truly yours,

MARVIN SCHWARTZ

By ____________________
Burton M. Epstein

BME:EML

CC: Captain Frank T. Scavo
Captain Robert J. Lowen
Captain Gerald L. Johnson
Dennison Young,Jr., Esq.
Rudolph DeMeo, Esq.

A 23

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10007

June 15, 1976

In Reply Refer To:
30-4167

Capt. Frank Scavo
President
International Organization of
Masters, Mates & Pilots
39 Broadway
New York, N. Y.

Dear Capt. Scavo:

Pursuant to an Order of the United States District Court, Southern District of New York, dated April 14, 1976, for a new officer election of the International Organization of Masters, Mates and Pilots and the Off-Shore Division, a subordinate labor organization of the International, a pre-nomination and pre-election conference was held on Monday, May 24, 1976 in Room 305, 26 Federal Plaza, New York, N.Y. The conference was held for the purpose of notifying those concerned of the Labor Department's role in the election and for the establishment of ground rules governing the nomination and election.

The undersigned, acting as chairman, opened the conference by citing the order mandating new nominations and a new election for the officers of the International Union and the Off-Shore Division, to be completed not later than December 31, 1976, and to be held under the supervision of the Secretary of Labor.

The election will be conducted in accordance with the International's Constitution dated January 20, 1975, and the Off-Shore Division's By-Laws dated October 1, 1970, with applicable amendments, insofar as lawful and practicable. All final decisions regarding the conduct of the nominations and election will be made by the undersigned who is the duly authorized representative of the Secretary of Labor.

It is noted that, while extensive discussion was held at the conference regarding most of the items contained in this letter, some of these points may not have surfaced but are included in the following ground rules.

This letter spells out certain actions which the union must take by a certain date. These necessary actions are summarized near the end of the letter.

Officers and Term of Office

The first matter discussed was the election of the Off-Shore Division's three principal officers. The chairman indicated that the principal international officers may not serve in these Off-Shore Division positions, as is presently required by the Division's By-Laws. In order to comply with federal law, members of the Off-Shore Division must elect the Executive Officer, Assistant Executive Officer, and Financial Officer, hereinafter referred to as "principal officers". These three principal officers will carry such other titles as the union may decide.

The Off-Shore Division By-Laws mandate that the Division's three Vice Presidents sit on the General Executive Board. Should the union wish to make a change in the Division's representation on the Board, such decision must be made and conveyed to the undersigned in writing not later than June 23, 1976, so that nomination notices may be prepared accordingly. In the absence of any decision by the union, the ballot will reflect only that the three Vice Presidents will sit on the General Executive Board.

All members of the International Organization of Masters, Mates and Pilots will be entitled to vote in the election for International President, International Executive Vice President, and Secretary-Treasurer. Only members of the Off-Shore Division will elect the following officers in addition to the three principal officers mentioned above:

Vice-President, Atlantic, Port Agent of New York

Vice-President, Gulf, Port Agent of Galveston

Vice-President, Pacific, Port Agent of San Francisco

Port Agent, New England Area, Boston, Massachusetts

Assistant Port Agent, New England Area, Port of Providence
(Incumbent presently located in Charleston, S.C.)

Executive Assistant to Port Agent of New York

Four (4) Assistant Port Agents of New York

Port Agent, Baltimore, Maryland

Assistant Port Agent, Baltimore, Maryland

Assistant Port Agent, Baltimore and Philadelphia, Pennsylvania

Port Agent, Jacksonville, Florida

Port Agent, Mobile, Alabama

Port Agent, Houston, Texas

Two (2) Assistant Port Agents, Houston, Texas

Assistant Port Agent, Galveston, Texas

Port Agent, Norfolk, Virginia

Assistant Port Agent, Norfolk, Virginia

Port Agent, New Orleans, Louisiana

Three (3) Assistant Port Agents, New Orleans, Louisiana

Port Agent, Port Arthur, Texas

Port Agent, Portland, Oregon

Port Agent, Seattle, Washington

Executive Assistant Port Agent, San Francisco, California

Three (3) Assistant Port Agents, San Francisco, California

Port Agent, Wilmington, California

Assistant Port Agent, Wilmington, California

The By-Laws of the Off-Shore Division provide that the Off-Shore Division Executive Council shall have the authority to close, reclassify, or merge ports and to designate all field representatives because of economic necessity or service to the membership. Such action may affect the number and titles of the above listed offices for election. Any action which may affect the number of officer positions, described above, must be taken and communicated to the undersigned not later than June 23, 1976, complete with the reasons on which such action is based.

The term of office for all International and Off-Shore Division Offices is three years.

Eligibility to Hold Office

The By-Laws of the Off-Shore Division require that candidates for office have at least four (4) years membership, two immediately prior to the nomination, in addition to a Good Standing provision.

Union representatives indicated that the union has not taken in any new members for the past five years. Therefore, the great majority has more than five years membership and less than 2% of the membership would be unqualified for nomination because of the four (4) year requirement. The chairman then stated the By-Law provision on eligibility would prevail in this particular election, subject to verification by the Labor Department of the figures provided by union representatives, not later than June 23, 1976.

It is noted that a member is not precluded from running for more than one office, provided that he is separately elected for each office. The Off-Shore Division By-Laws, however, state that "NO member may be a candidate for more than one paid elective office in any election."

Election of Delegates

Wherever an officer of the International or the Off-Shore Division is a convention delegate by virtue of his office, that fact will be reflected on the ballot. Positions for other delegates may be placed on the ballot at the union's option. It is noted that the election of delegates is not covered by the provisions of the Labor-Management Reporting and Disclosure Act of 1959 and, therefore, is not subject to the Secretary's supervision. The three principal officers of the Off-Shore Division may, at the union's option, be convention delegates by virtue of their office.

The decisions regarding election of delegates must be made by the union and communicated to the undersigned not later than June 23, 1976 in order to be properly reflected in the nomination notice. In the absence of any decision by the union, the ballot will reflect delegate status only in those cases where an elected officer becomes a delegate by virtue of his officer position.

The Secretary's supervision with respect to any election of delegates will be limited to action necessary to insure that the election of officers is conducted properly.

Membership Standing

The International Constitution requires that, for a member to retain his good standing, dues must be paid for the current calendar quarter, plus any assessments and other indebtedness due the International or the subordinate body with which he is affiliated. If on a voyage, and dues are unpaid for six months (2 calendar quarters), the member must, within 72 hours after returning to a United States port, pay all of the above dues, thus regaining his good standing. At the time a member falls in arrears in dues and assessments or other indebtedness for six (6) months (two calendar quarters), he stands suspended and is no longer in good standing. In order to regain good standing in a situation other than above, he must file a new membership application.

After considerable discussion regarding a retired member's eligibility to vote and to be nominated for office, it was decided that, inasmuch as the Constitution is silent regarding retired members, such members may vote and run for office as long as they fulfill all constitutional requirements. No disagreement with this decision was voiced.

Nomination Procedures

The Union indicated that it may decide to call a special convention during the first week in August, 1976. As indicated by union representatives, the convention would probably be held on the premises of the Maritime Institute of Technology and Graduate Studies School, in Baltimore, Maryland. Such a convention would fulfill the constitutional requirement regarding the nomination process. The Constitution also provides for nomination by petition. It was noted that the calling of such a convention for the purpose of holding nominations will be acceptable to the Department.

Campaign Procedures

Candidates for International Office have the right to examine the entire membership lists, including those of all divisions, while Off-Shore Division candidates have the right to examine the Off-Shore Division membership lists only. All lists will be available in the New York office of the union. Incumbents may not utilize union assets, property or any other resources for their campaign purposes. No part of the union's newspaper, including notices and columns, may include campaigning in any form. Letters or parts of letters addressed to the "News and Views" column published in the "Masters, Mates and Pilots" and dealing with any aspect of the upcoming officer election must be omitted until the end of the election period. Representatives of this office will review all material prior to publication to insure compliance with these rules. In the event a run-off election becomes necessary, the time of this restriction is extended to cover the run-off period. Campaigning in whatever form on the Union's property and in Union halls and offices, including the Maritime Institute of Technology and Graduate Studies Facilities in Baltimore, Maryland is a violation of federal law. No union publication or bulletin boards may be used for campaigning. Periodic inspection and review by the Department of Labor will be scheduled. Any candidate may distribute campaign literature, at the candidate's expense, by delivering such literature to a mailing house or other facility designated by the union and approved by this office.

With respect to the projected Special Convention to be held at the Maritime Institute, campaigning may be permitted at the option of the union, provided that opportunities for campaigning are made available to all delegates on an equal basis.

International Ballot Committee

An International Ballot Committee will be elected at the Special Convention. If no convention is held, the union's General Executive Board may, at its option, determine the method of selecting such a Committee. The Committee will function in accordance with the Union's Constitution, under the supervision of the Secretary of Labor. If no Committee is elected or selected, appropriate employees and/or members of the union will carry out the necessary functions under the Secretary's supervision.

It was the view of union representatives that a number of details regarding the mechanics of the election would have to await action by the Ballot Committee. An example is the format and listing of candidates on the ballot. There was no objection, and the Department is agreeable to the proposition. Thus, such matters as the order in which candidates' names appear on the ballot, and other important details will be decided by the Committee whose decisions will, of course, be subject to the approval of the Department of Labor.

Addressing of Ballots

The International Constitution requires that the only address to which a ballot may be sent is the last known address of the member. Ballots may not be mailed in care of the union or in care of an official of the union.

Duplicate ballots will be sent to qualified members on request.

Deadline for Return of Ballots

All voted ballots must be mailed by members; no ballots returned in person will be accepted. Envelopes containing ballots must be received not later than 5:00 P.M. on the 90th day of the election. A six day grace period beginning immediately after the 90th day will provide an opportunity to accept or reject ballots received during this period depending on several factors. Ballots with a postmark dated after the 90th day, or no postmark but received after the 90th day will not be counted. Ballots bearing a clearly legible postmark dated prior to the 90th day will be accepted as required by constitutional provision. Ballots without a legible postmark received by the 90th day will be counted.

Tallying of the Ballots

The International Constitution provides for the selection of an impartial balloting agency by vote of the Convention. Should it be decided, for reasons of economy, to have employees or union members who are not candidates perform the functions usually carried out by the outside balloting agency, the Labor Department will not oppose such a decision. The Department, however, will provide only supervision over nominations and election but will not under any condition perform any of the balloting agency's functions. The Department's position will be the same if there is no convention and the union decides against the use of an outside balloting agency.

40% Plurality-Majority Vote to be Elected

Candidates for International office must receive a plurality of not less than 40% of the valid votes counted, in order to be elected. The three new principal officers of the Off-Shore Division will be subject to the same requirements for election as apply to all other officers of the Division, which is by majority vote of the valid ballots cast in the Off-Shore Division.

Challenge Procedure

The International's Constitution provides that all challenges be made at the time of the counting of the ballots and directed to the International Ballot Committee which may refer any challenges to the Impartial Balloting Agency. Under the procedures of the Labor Department, which will govern here, complaints on the conduct of the election may be made at anytime before, during or up to ten days after the election.

Complaints may be made directly to the Department of Labor. They may be made orally or in writing and should be addressed to:

Compliance Officer Richard Montross
U. S. Department of Labor, Roon 1751
26 Federal Plaza
New York, N. Y. 10007
Phone: 212-264-1964

Schedule of Election

Assuming that the union will decide to hold a Special Convention for nomination purposes, the following tentative schedule for the election was discussed at the meeting and is established.

FRIDAY, JUNE 25 (Approximate)

Nomination notices and petition blanks to printer.

WEDNESDAY, JUNE 30 (Approximate)

Nomination notices and petition blanks mailed to membership and union halls. Notice will advise membership regarding available method(s) of nomination.

MONDAY, AUGUST 2 to FRIDAY, AUGUST 6 (Approximate)

Nomination at Special Convention (if held).

FRIDAY, AUGUST 6

Close of nomination (including nomination by petition).
(Note: Should the union decide not to call a convention, the nomination by petition period will be extended.)

MONDAY, AUGUST 9

Qualified and unqualified candidates notified by telegram.

THURSDAY, AUGUST 19

Last day for receipt of candidates' acceptance, pictures and statements to be included on the ballot.

MONDAY, AUGUST 23

Notice of election and ballot to printer.

Election edition of union publication to printer.

MONDAY, AUGUST 30

Election edition of union publication mailed.

FRIDAY, SEPTEMBER 3

Election notice and ballots mailed.

THURSDAY, DECEMBER 2

Last day for receipt of voted ballots

THURSDAY, DECEMBER 9

Ballot count begins.

Supervision by the Secretary of Labor

Officials of the International Organization and the Off-Shore Division and other interested parties should be advised that no steps leading to the nomination or election may be taken without specific approval of the Labor Department.

As stated by the undersigned on previous occasions, including a letter addressed to you, dated June 3, 1976, and a letter addressed to your attorney on June 7, 1976, it is essential to move promptly in order to comply with the letter and spirit of the District Court Order.

Action to be taken by the Union

The following is a summary of the actions which the union is required to take in response to the U. S. District Court Order and the Department of Labor's supervisory authority:

1. Decision to be received by this office not later than June 23, 1976 as to the titles to be carried by the three principal officers of the Off-Shore Division.

2. Decision to be received by this office not later than June 23, 1976 as to the titles of Off-Shore Division officers who will represent the Division on the General Executive Board.

3. Decision to be received by this office not later than June 23, 1976 as to the Off-Shore Division officer positions to be filled in the 1976 supervised election, in addition to the three principal officer positions.

4. Decision to be received by this office not later than June 23, 1976 as to any delegate positions to be filled in the 1976 supervised election.

5. Decision to be received by this office not later than June 23, 1976 as to whether a special convention for the purpose of nomination will be held; and if so, where and when.

6. If it is the union's decision that no convention is to be held, a decision as to the method of selecting an International Ballot Committee, if any, must be communicated to this office not later than June 23, 1976.

7. Decision to be received by this office not later than June 23, 1976 as to whether an outside balloting agency will be retained by the union. If this decision is to be made at the convention, it may be deferred until the date of the convention. However, the identities of the individual union employees and/or members responsible for performing all necessary functions in connection with nominations and election must be communicated to this office not later than June 23, 1976. The selection of such individuals is particularly important if the election of the International Ballot Committee must await a convention in August 1976.

8. The union must inform this office, not later than June 23, 1976, of the number of union members in the Off-Shore Division, who presently qualify for union office under the Division's By-Laws, as well as the total of all members of the Division.

This office stands ready at any time to provide advice in accordance with the Secretary's supervisory role. Your cooperation and that of your staff will be appreciated.

Very truly yours,

GERARD GOMPERTZ
Deputy Area Administrator

GG/lrl

cc: See Service Sheet

SERVICE SHEET

Captain Frank Scavo, International President
39 Broadway
New York, N.Y. 10006

Captain Gerald Johnson, International Executive Vice President
39 Broadway
New York, N.Y. 10006

Captain Robert Lowen, International Secretary-Treasurer
39 Broadway
New York, N.Y. 10006

Marvin Schwartz, Esq. Counsel
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New York, N.Y.

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U. S. Attorney's Office
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Captain Richard Bara,
Assistant Port Agent of San Francisco
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P. O. Box 191
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Mr. Dennis A. Keavey
79 Beacon Street
Norwalk, Conn.

Captain Robert O. Thompson, Assistant Port Agent
105 Washington Street
New York, N. Y. 10006

Captain E. K. Swanson, Assistant Port Agent
105 Washington Street
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Captain John Seybert
3 Uphill Lane
Woodbury, N. Y. 11797

Captain David C. Haa
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Captain Robert MacAlvanah
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San Pedro, San Jose, Costa Rica

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Captain Nicholas La Rocca
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Metairie, La. 70003

Captain Charles Norstrand
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Hollywood, Fla. 33020

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Captain Charles Hemming
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Cornelius Coyle
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Colonia, N. J. 07067

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Captain E. W. Simmons, Port Agent
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Walter J. Anderson
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Chickasaw, Ala. 36611

Mr. James T. Hopkins, Jr.
7828 Woodside Terrace, Apt. T-3
Glen Burnie, Md. 21061

International Organization of
Masters, Mates & Pilots
39 Broadway, New York, N.Y. 10006/(212) 944-8505/Cable BRIDGEDECK/Telex No. 12-5858

FRANK T. SCAVO
International President
GERALD L. JOHNSON
International Executive Vice President
ROBERT J. LOWEN
International Secretary Treasurer

June 22, 1976

Mr. Gerard Gumpertz
Deputy Area Administrator
U. S. Department of Labor
Labor-Management Services
Administration
26 Federal Plaza
New York, New York 10007

Re: Your File 30-4167

Dear Mr. Gumpertz:

This will acknowledge receipt of your letter dated June 15, 1976 concerning the International Organization of Masters, Mates & Pilots and the Offshore Division of the International Organization of Masters, Mates & Pilots.

Let me say at the outset that your basic request that the "Union" reach certain agreements with you or come to some "decision" on matters you discuss, cannot be complied with by me as President, nor by the Offshore Division Executive Council, nor by the General Executive Board of the International Organization of Masters, Mates & Pilots nor even by the highest governing authority of the Union, the Convention.

What your letter outlines, in many areas, are suggestions or instructions for complete changes in the Constitution of the International Organization of Masters, Mates & Pilots and in the BY-Laws of the Offshore Division which, according to those documents, are changes that can be made only by membership referendum. Consequently, your desire that the "Union" make certain decisions, relates to decisions which are only in the hands of the membership.

Moreover, the suggestions or instructions in your letter are those only of the Department of Labor and are not Orders of the Court. Any possible agreement with them at this stage that might be made by me or by any of the members of the above mentioned executive bodies could subject the individuals so agreeing to law suits brought by a member or members for taking action beyond their authority, and consequently action which constitutes a breach of their fiduciary responsibilities. Until these "instructions" with respect to any matters that require a change in the Constitution or By-Laws become Orders of the Court, neither I nor the executive bodies of the International or the Offshore Division have the authority to agree therewith.

With regard to the several matters outlined in your letter, let me make the following comments:

Officers and Term of Office - Page 2

At page 2 of your letter you state: "..... that the principal international officers may not serve in these Off-Shore Division positions, as is presently required by the Division's By-Laws. In order to comply with federal law, members of the Off-Shore Division must elect the Executive Officer, Assistant Executive Officer, and Financial Officer, hereinafter referred to as 'principal officers'. These three principal officers will carry such other titles as the union may decide."

First of all, this issue is one that remains unresolved in the lawsuit. It has never been passed on by the Court. As you know, the defendant Union in the law suit has denied that such structure is violative of the law, and that is where the litigation now stands. There has never been a judicial determination on this issue.

With respect to your comments that "the Union [may] wish to make a change in the Division's representation on the [General Executive] Board" as set forth in paragraph 2 on page 2 of your letter, this is one of the matters referred to above which is solely within the province of the membership of the International and the membership of the Offshore Division and cannot be decided by either myself or the governing bodies of the International or the Offshore Division.

With respect to the officer positions of the Offshore Division which are to be voted upon (pages 2 and 3 of your letter) the Offshore Division Executive Council is now making a study of those positions with a view toward possible changes because of economics or service to the membership. No decision on such possible changes has as yet been reached by the Executive Council.

Eligibility to Hold Office - Page 4

Although your third paragraph under this topic on page 4 sets forth the language from the Offshore Division By-Laws, you have not given any indication as to whether or not this will preclude a member from running for an International office concurrently with running for an Offshore Division office. Since in the election, the Secretary is to be the supervisor, and is to be the one to whom complaints and inquiries will be made, we would suggest that this is a matter that the Secretary should pass upon now.

Election of Delegates - Page 4

This again, is one of those matters that can only be determined by membership referendum and as it now stands, your "instructions"with respect thereto are not Orders of the Court.

Nomination Procedures - Page 5

Although your comments on page 5 with respect to nomination procedures address the procedures for International office, you are silent with regard to the procedures relative to Offshore Division nominations. The Offshore Division By-Laws provide for such nominations to be held in the month of June, for a full 30 day period. There is no reference in your letter for a nominating time frame for the Offshore Division.

Campaign Procedures - Pages 5 & 6

With regard to your comments concerning campaign procedures appearing on page 6, we assume that you do not object to the Union's publication of a special election supplement which has always been the practice of the Organization. Moreover, Section 4 of Article 5 of the Offshore Division By-Laws specifically provides that

"At the outset of and during the said election period, each candidate shall be allowed equal space in the Organization's official publication to present his qualifications, views and photgraph subject to reasonable rules uniformly imposed by the General Executive Board." I believe you have copies of each supplement which appeared in both the 1971 and 1974 elections.

While we are in total agreement with you that the Organization's training center in Maryland, which is administered by a joint Trust, should not be used for campaigning, we know of no federal law that prohibits campaigning on Union property. The policy in the past has been to allow all members equal opportunity in Union halls to express any opinions, views, etc. on any matters relating to union business, including candidates for office. I may also point out that these specific rights are protected under Title I of the L. M. R. D. A.

40% Plurality-Majority Vote To Be Elected - Page 7

With respect to the vote for Offshore Division Officers, your letter is erroneous. A simple plurality vote, rather than a majority vote, of the valid ballots cast in the Offshore Division determines the winner of any position. This exact issue came up in the 1974 election and the Arbitrator ruled that a simple plurality vote governed the election in the Offshore Division. Again, in view of the fact that the Secretary will supervise the election, we suggest that such ruling should be established by the Secretary now.

To recapitulate, as stated above, neither I nor the governing bodies of the International and Offshore Division are authorized to "agree" with your instructions concerning the election. The questions and procedures which you raise and outline are not Orders of the Court, and therefore we are not authorized to comply therewith.

Very truly yours,

Frank T. Scavo
International President

FTS:tmd

D7-1c
6-2217

Exhibit [illegible]

Analysis Of Supevisory Issues

A. Union Authority to Act

SECRETARY: In the June 15, 1976 letter*, the Secretary required that the union take certain decisions that bear directly on the conduct of the election, and to advise the Secretary thereof not later than June 23, 1976.

UNION: The union has failed entirely to comply with the Secretary's instructions. Rather, by letter of June 22, 1976,** it takes the position that these decisions can only be made by the membership at large and refuses to act until the Secretary's instructions are embodied in the court orders.

COMMENT: The IOMM&P Constitution permits the union's General Executive Board ("G.E.B.")*** to act on "all matters related to the welfare of the Organization****" not otherwise prohibited by the IOMM&P Constitution or restricted by membership referendum and [it] "shall decide on all questions of law." (Art. VII, Sec. 3, IOMM&P Constitution.) [NOTE: there appears to be no constitutional prohibition or restrictive membership referendum preventing the G.E.B. from so acting] Specifically the G.E.B. is authorized to "supervise the activities, affairs and functioning of the Organization." (Art. VII, Sec. 3(a), IOMM&P Constitution.)

[redacted]

Also, the International Subcommittee***** is authorized to conduct the affairs of the IOMM&P between meetings of the G.E.B. and it "shall have full authority to act on behalf of the Organization, subject to the action of the next meeting of the General Executive Board or Convention." (Art. VI, Sec. 4, IOMM&P Constitution.)

With respect to the Offshore Division, there is an Executive Council****** which has "the authority to consider and act on any and all matters affecting the Offshore Division." (Art. IX, Sec. 2(b), Offshore Div. By-Laws.)

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* Mr. Gumperts' letter of June 15, 1976 to International President Scavo. (Exhibit C.)

** International President Scavo's letter of June 22, 1976 to Mr. Gumperts. (Exhibit D.)

*** The G.E.B. consists of the International President, International Executive Vice-President, International Secretary-Treasurer, the three Vice-Presidents of the Offshore Division, the Vice President of any other fully-formed division and the Executive Officers of any other subordinate bodies which have not yet become fully-formed divisions. (Art. V, Sec. 2, IOMM&P Constitution.)

**** The IOMM&P is referred to in the Constitution as the "Organization" (Art. I, Sec. 1, IOMM&P Constitution.)

***** The International Subcommittee consists of the International President, the International Vice-President and the International Secretary-Treasurer. (Art. V, Sec. 2, IOMM&P Constitution.)

****** The Executive Council is composed of the three International officers, the three Offshore Division Vice-Presidents and various other Port Agents. (Art. IX, Sec. 1, Offshore Div. By-Laws.)

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once separately elected, to sit on the C.[illegible].B., that is up to the union. All the Secretary insisted upon in his June 15, 1976 letter (p. 2) was that the union make a decision one way or the other and to advise the Secretary of that decision by June 23 1976.

UNION: The union failed to make the required decision merely proclaiming in its June 22, 1976 letter (p. 2) that the decision was one for the membership at large.

COMMENT: We have previously explained how the union is in a position to and should be ordered to make a decision on this matter by a date certain. As the Secretary pointed out in his June 15, 1976 letter, if no decision is made, the nomination announcement and ballots cannot be prepared appropriately.

4. Which Offshore Division Officers The Executive Council May Wish To Eliminate

SECRETARY: The Offshore Division By-Laws allow the Executive Council to close, reclassify or merge ports, and to designate all Field Representatives if economic necessity or service to the membership requires it.* In his June 15, 1976 letter the Secretary permitted the union to take any action that was justified, but, since such action may have affected the number of officer positions, the union was instructed to take such action and communicate it to the Secretary by June 23, 1976, together with the reasons on which such action was based (p. 3).

UNION: The union failed to advise the Secretary of any decisions by June 2 , 1976. Rather in its June 22, 1976 letter the union advises that the Offshore Division's Executive Council is still studying this matter (p. 3).

COMMENT The union should be ordered to make whatever decisions it intends to make by a date certain, and justify them, or be precluded from changing the Offshore Division positions for this court-ordered election.

5. Eligibility to Hold Office

SECRETARY: The Offshore Division By-Laws require that candidates for office have at least four years membership, two immediately prior to the nomination, and be members in good standing. (Art. IV, Sec. 1, Offshore Div. By-Laws.) The union represented that these provisions were reasonable qualifications since only less than 2% of the membership would be ineligible thereunder to run for office. The Secretary ruled that these criteria would prevail during the court-ordered election subject to verification by the Secretary that the union's figures were accurate. In the June 15, 1976 letter the Secretary instructed the union to provide those figures by June 23, 1976 (pp. 4 and 10).

UNION: The union has completely ignored this directive.

COMMENT: If the union's figures do not support the union's representation, other criteria which are reasonable may be ordered. The union should be ordered to provide figures verifying its representations by a date certain.

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* This authority was added to the Offshore Division By-Laws by recent referendum. See proposition No. 5 which was approved by the membership and has been supplied to the Court with a copy of the Offshore Division By-Laws.

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6. Whether Members Are Entitled To Run For More Than One Office

SECRETARY: In his June 15, 1976 letter the Secretary noted that a member would not be precluded from running for more than one office, provided that he is separately elected to each position (p. 4). The Secretary also noted that the Offshore Division By-Laws state that "No member may be a candidate for more than one paid elective office in any election" (Art. IV, Sec 4.).

UNION: In its June 22, 1976 letter the union questions whether the Secretary's comments will permit a member running for International office to also run for an Offshore Division office (p. 3).

COMMENT: The Secretary has no objection to a member running for or being elected to two union offices (e.g., an International office and an Offshore Division office) provided that separate elections are held for each office and that the union's constitution and by-laws do not prohibit such occurrence.

In the instant case, the IOMM&P Constitution provides: "No member can accept nomination to, or be candidate for more than one office in an International election." (Art. V, Sec. 4, IOMM&P Constitution). The Offshore Division By-Laws contain the provision mentioned above. There may be some way the union interprets these provisions to allow a member in the forthcoming court-ordered election to run for International office and Offshore Division office simultaneously. This interpretation, however, must be provided to the Secretary for his review to ensure it is reasonable, practicable and does not in some way violate the law. If the union chooses to submit its interpretation to the Secretary, the Court should order that it be done by a date certain.

7. Delegates To The Convention

SECRETARY: There was discussion at the pre-nomination/pre-election conference regarding the policy governing the possible election of convention delegates in conjunction with the supervised election and whether the Secretary would supervise such election also. In the June 15, 1976 letter, the Secretary advised the union that it could conduct its election of convention delegates simultaneously with the court-ordered election if it wanted to, but it would have to decide to do so by June 23, 1976 so that such information could be properly reflected on the nomination notice. If no such information was received by June 23, 1976, however, the Secretary advised the union that the only delegate information that the union could reflect on the election ballot would be for those situations where an elected officer happens to become a delegate by virtue of his officer position. The Secretary advised, in addition, that he would not supervise convention delegate elections, however, since such positions are not subject to the Act, let alone the Court's order.

UNION: The union failed to provide any delegate information despite its own previous request that it be permitted to conduct such election simultaneously with the court-ordered election. Rather, it merely claimed that this "matter" could only be determined by a membership referendum.

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COMMENT: The Secretary has no particular interest in the delegate positions, except insofar as they may impact on the court-ordered election. The union should be ordered to provide such convention delegate information as the Secretary requests by a date certain or be precluded completely from conducting any convention delegate election together with the court-ordered election.

8. Special Convention - Nominations

SECRETARY: In the June 15, 1976 letter, the Secretary advised that he would not object if the union called a special convention for nominating officers, as the union indicated it might do (p. 5). The Secretary called upon the union to decide by June 23, 1976, however, whether such a convention would be held (p. 10).

UNION: The union failed to decide whether such a convention would be held. It merely claimed that the Secretary did not indicate whether candidates for Offshore Division office, in addition to those running for International office, could also be nominated at such convention.

COMMENT: The IOMM&P Constitution provides for nomination of International officers at a convention (or by petition) (Art. V, Sec. 5, IOMM&P Constitution). The Offshore Division By-Laws provide, however, that candidates for Offshore Division offices be nominated by petition normally during the month of June (Art. V, Sec. 1, Offshore Div. By-Laws). Offshore Division candidates are not nominated at a convention.

Accordingly, the Secretary, as was implicit in his June 15, 1976 letter, had no objection to nominating International officers at a special convention. With respect to Offshore Division officers, however, it is the Secretary's position that they should be nominated in the manner provided for in the Offshore Division By-Laws (with the timing adjusted appropriately).

9. Campaign Procedures

SECRETARY: Among the procedures outlined by the Secretary in the June 15, 1976 letter was that campaigning could not be conducted on the union's property, in the union halls or offices or at the union's training school (pp. 5-6).

UNION: The union expressed its opinion in its letter of June 22, 1976 that while campaigning would be prohibited at the union's training school, it could be conducted in the union halls noting that its past policy had been to allow members equal opportunity to express their opinions in union halls on any matters relating to union business, including candidates for office (p. 4).

COMMENT. The Secretary is concerned that it would be difficult for the Department of Labor to ensure that all candidates for office in this particular election would be guaranteed an equal opportunity to use the union halls in the various ports around the country for campaigning purposes. The supervisory/administrative problems become apparent when one considers, for example, that all Offshore Division members vote for all Offshore Division officers in every port in the nation and that candidates for each office would have to be given equal opportunity at every single union hall throughout the country. When such difficulties arise the union's traditional practices must yield to what may be "practicable" during supervision (29 U.S.C. §482(c)). It should be made clear, however, that the Secretary has no intention of depriving members of their Title I rights. Nor does the Secretary wish to prohibit candidates absolutely from making their views known to the membership. The Secretary is only concerned that a union hall not be used to the advantage of one candidate over another or that it become, in effect, a campaign facility for any one faction. Accordingly, the Secretary would consider a well defined and limited program the union may wish to devise which would ensure that each candidate has equal opportunity in the use of union halls for campaigning. A candidates' forum when all candidates or their representatives would have identical opportunity to address members and to distribute literature, for example, may be acceptable. The Secretary in his sole judgment would determine whether such a program in every detail is lawful and practicable. If such a program were approved by the Secretary it would be subject to the Secretary's ongoing supervision, of course, and could be terminated at his discretion if warranted. If the union chooses to submit such a proposed program for the Secretary's review, it should be ordered to do so by a date certain.

10. International Ballot Committee

SECRETARY: Normally, an International Ballot Committee ("I.B.C.") consisting of five members is nominated and elected at the nominating convention and it has the authority to supervise the election of officers (Art. V, Sec. 6, IOMM&P Constitution). In the June 15, 1976 letter the Secretary gave the union the option of selecting its I.B.C. at the special convention or, if none was held, of allowing the G.E.B. to determine how the I.B.C. was to be selected. Alternatively, if the union chose to have no I.B.C. at all, other union employees or members had to be designated to carry out the necessary functions under the Secretary's supervision (p. 6). Decisions with respect to the I.B.C. had to be made by the union by June 23, 1976.

UNION: The union failed to respond to this directive at all.

COMMENT: The union should be ordered to decide by a date certain whether it will have an I.B.C. and if so how it will be chosen. If there is to be none, the identities of the employees/members of the union performing any and all election functions should be provided to the Secretary by a date certain.

11. Mechanics Of The Election (e.g.
Tallying Of The Ballots)

SECRETARY: In his June 15, 1976 letter the Secretary advised the union that he would not oppose a decision by the union, for reasons of economy, to have union employees/members perform the election functions normally carried out by an outside balloting agency. The only thing required of the union was that it inform the Secretary by June 23, 1976 whether an independent balloting agency would be eliminated or not. If it was to be eliminated, the identities of the union employees/members performing the election functions were to be provided to the Secretary by June 23, 1976. (See pp. 7 and 10, June 15, 1976 letter).

UNION: The union failed to respond at all.

COMMENT: The union should be ordered to decide by a date certain if it will use an outside balloting agency or not, and if not to provide the names of the union employees/members who will perform the election functions.

12. The Percentage Vote Needed
To Be Elected

SECRETARY: In his letter of June 15, 1976, the Secretary indicated that candidates for International office must receive a plurality of not less than 40% of the valid votes counted, in order to be elected. He also indicated that candidates for Offshore Division offices, including those for the three principal offices, would need a majority vote to be elected. (See p. 7, June 15, 1976 letter).

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UNION: In its letter of June 22, 1976 the union advanced the position that based on an arbitrator's previous ruling all that was necessary to be elected to Offshore Division office was a simple plurality vote, not a majority (p. 4).

COMMENT: Pursuant to Art. XIX, Sec. 2(i) of the Offshore Division By-Laws, Offshore Division Vice Presidents must be elected by a majority vote of the membership of the Offshore Division. With respect to the other Offshore Division offices the union is free to determine the method used to select the winning candidate. If it is to be a plurality of the votes cast, as the union seems to indicate, then that would be satisfactory. Whatever is its choice, the union should be ordered to decide promptly and advise the Secretary by a date certain so that the nomination announcements may be prepared appropriately.

13. Union Publication Of Special Election Supplement

STATEMENT: In its letter of June 22, 1976 the union assumes that the Secretary has not objected to the union's publishing a special election supplement containing the qualifications, views and photographs of the candidates.

COMMENT: As is evident from the notes on page 9 of the Secretary's June 15, 1976 letter under the August 23 and 30 scheduling dates, the Secretary anticipates that an election edition of some union publication will be used for this purpose. Subject to the Department's inspection and review, an election supplement along the lines of those used during the 1971 and 1974 elections will be acceptable.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----------------------------------x

W. J. USERY, Secretary of Labor,
United States Department of Labor,

Plaintiff,

- v -

INTERNATIONAL ORGANIZATION OF
MASTERS, MATES AND PILOTS,
INTERNATIONAL MARITIME DIVISION,
ILA, AFL-CIO,

Defendant.
-----------------------------------x

AFFIDAVIT IN OPPOSITION

72 Civ. [illegible] ([illegible]BM)

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss

BURTON M. EPSTEIN, being duly sworn, deposes and says:

I am an attorney at law and assistant General Counsel to the defendant Union. I submit this Affidavit in opposition to certain aspects of the relief sought by the Department of Labor set forth in the Order to Show Cause and the papers in support thereof, and in support of the objection previously raised to certain "instructions" or ground rule directives of the Secretary of Labor regarding the upcoming election. These objections were set forth in the letter to Mr. Gerard Gumpertz, Deputy Area Administrator of the U. S. Department of Labor, Labor Management Services Administration, dated June 22, 1976 from Captain Frank Scavo, President of the defendant Union. (Plaintiff's exhibit B).

THE QUESTION OF DELAY

We must at the outset insist that Mr. Young be chastised by this Court for his purposeful attempt to mislead the Court into believing that it is the Union which is responsible for and/or causing a delay in this matter. Mr. Young is aware of the events that have taken place since the Court rendered its initial decision but he has chosen to omit mentioning the Secretary of Labor's delays in this matter.

The judgment of the District Court was entered on April 15, 1976, but the Department of Labor knew for almost a month that the election had been declared void, since the District Court's decision so holding was rendered on March 17, 1976.

It was not until May 12, 1976, however, that the Secretary of Labor sent its notice for the pre-election conference, and set forth the date of May 24, 1976 as the date for such conference.

At that conference, Mr. Gumpertz stated that he would be sending to the Union office and other appropriate parties "within a few days" the letter from the Department formulating its ground rules for the election.

It was necessary for your deponent to write three letters to Mr. Gumpertz reminding him of this before we finally received from the Department, by letter dated June 15, 1976, the Department's formulation of its ground rules. This was three weeks after the pre-election conference.

It was made clear to Mr. Gumpertz at the initial meeting that all parties were reserving their rights to object to any ground rules or instructions that the Department might formulate. This was repeated to Mr. Gumpertz a number of times at the May 24 session.

Indeed, in my letter to Mr. Gumpertz, dated June 11, 1976, I foresaw exactly what now apparently seems to have come to fruition, with regard to this matter. In such letter I stated in part as follows:

> "It is your delay in furnishing the letter which will lead to any time problems that may arise. I certainly hope that you do not think that by

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> delaying your letter, you will be able to foreclose the rights of any party to raise a protest with respect to your formulation concerning the election under the pressure of the time limit established by the Federal Court. Any such time pressure is being created by you and your failure to furnish the letter within the time frame you initially indicated." (Exhibit B annexed to the plaintiff's moving papers.)

Mr. Gumpertz' letter dated June 15, 1976, was delivered at 5 P.M. of that date. Captain Scavo's reply was sent June 22, 1976.

It is outrageous for Mr. Young to insinuate that delay in this matter lies at the feet of the Union. Moreover, Mr. Young, in his one-sided story fails to advise this Court that the Union has been cooperating diligently with the Department of Labor, and that since the May 24, 1976 meeting, we have had two subsequent meetings with Mr. Montrose, the Department of Labor's Compliance Officer with respect to the election. We have submitted to Mr. Montrose for his review, in accordance with one of the Secretary's ground rules, material which the Union intends to send out to the membership to be certain that it does not contain campaign literature. Mr. Young has failed to state that substantial rewriting of such material has been done where objections were raised by the Department of Labor.

The ad hominem comments of Mr. Young are totally without merit and completely out of place. We suggest that Mr. Montrose be called upon to verify the cooperation which we have given him in this matter.

THE SUBSTANTIVE LEGAL ISSUE REGARDING THE THREE INTERNATIONAL OFFICERS

Mr. Young dons a false cloak of naivete when he implies, on page 6 of his Affidavit, that there was a possibility that the Union would abandon its claim sometime during the course of the litigation that the structure of the Organization, by which the three international officers are also the chief executive officers of all fully-formed divisions thereof, is entirely legal.

Mr. Young knows that there has never been one whit of a hint that the Union was going to retreat from this position. It was strongly argued in the Summary Judgment papers and it was made a significant part of the briefs to the Court of Appeals. Mr. Young knows absolutely that there was not the remotest chance that the Union would abandon its position.

To imply otherwise, as Mr. Young does in his Affidavit, is to mislead the Court.

In his Affidavit, Mr. Young has indicated that he has furnished to the Court the parties' prior papers in this matter, submitted both in the initial motion for Summary Judgment to this Court and in the briefs to the Court of Appeals. We trust he has done so, and consequently no need would be served by a duplication of those papers or the arguments in this Affidavit.

It is clear, we submit, that the present structure of the Organization is not violative of the law, and we respectfully refer the Court to the cases cited by us and our argument on the issue in the papers supplied by Mr. Young.

Officials of the Organization Cannot Amend the Constitution and By-Laws

Mr. Young commits another disservice to the Court by implying that Captain Scavo's concern about the possibility of suit being brought against Union officials for amending the Constitution and Offshore Division By-Laws--actions beyond their scope and authority--is frivolous.

Mr. Young knows better. He knows that this Union is highly politicized and has been engaged in many lawsuits, including Section 501 suits, brought by rank and file members against Union officers for actions allegedly beyond the scope of or in violation of the Constitution and Offshore Division By-Laws. His reading and interpretation of the authority of the Organization's officials would hardly constitute a legally sufficient defense in an action brought against an official by a member of the Union.

Absent a Court ordered amendment to the Constitution or By-Laws, the Organization's officials would be placing themselves in jeopardy by fashioning amendments themselves or even acquiescing to amendments unilaterally formulated by the Secretary of Labor.

The Percentage Vote Needed to be Elected

Mr. Young is wrong in stating that the three Offshore Division vice-president positions must be elected by a majority vote. Subsequent to the adoption of Article XIX, Section 2(i) of the Offshore Division By-Laws, to which Mr. Young refers, the Offshore Division membership by referendum, in 1974, amended the by-laws to eliminate the separate position of vice-president. Such titles were, by such amendment, given to those officers who were elected to the positions of Port Agent New York, Port Agent Galveston, and Port Agent San Francisco. Annexed hereto as exhibit A is a copy of Proposition No. 5 containing such amendment, which was passed by the Offshore Division membership.

Moreover, the simple plurality vote was confirmed during the course of the 1974 election, where American Arbitration Association arbitrator, Burton Turkus, so ruled during the course of the ballot count when this issue was raised. (Exhibit B).

There is no authority for the Secretary to impose his interpretation on a provision of the Offshore Division By-Laws where the Organization and an impartial Umpire has interpreted it otherwise. There is nothing illegal nor impracticable about the simple plurality rule. Additionally, the Secretary's 50% view will almost automatically force the election for the three vice-presidents into a costly, time-consuming runoff. The amendment to the By-Laws was purposely designed to avoid just such a runoff.

Reclassification of Ports

By specific provision of the Offshore Division By-Laws, the Offshore Division Executive Council has the authority to close, reclassify or merge ports and to designate all field representatives. It is specifically not necessary for a membership referendum on this issue.

A meeting of the Offshore Division Executive Council took place on June 17 and June 18, 1976, at which time the members of the Council were given certain financial data relating to the operation of the various Offshore Division ports. Such data was provided with a view toward a reclassification of ports.

A meeting of the Offshore Division Executive Council has been called for July 7 and July 8, 1976 to act on such reclassification.

The Secretary has instructed that the officers elected in the election will hold office for three years. This constitutes an amendment to the present scheduled election periods, whereby the next regular election is set for 1977. In line with the discussion previously set forth with regard to authority to make such change, we trust that the Court will embody in its order, a directive concerning the length of office.

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If the elected officials are to hold office for three years, it is most urgent that the Offshore Division Executive Council have its meeting to consider the reclassification of ports since otherwise the positions now in effect will remain in effect for an additional three years.

Presumably, once the notice of those officer positions to be elected is sent out to the membership, no change could be made thereafter since a candidate for an office that is subsequently eliminated could claim that he had been effectively barred from running for office in the election, in violation of his membership rights.

Special International Convention -
August 17, 1976

It is now contemplated that a special convention of the Union will be held in Baltimore commencing August 17, 1976, for the purpose of nomination of international office, and for the election of an international ballot committee. Such time schedule would permit the conclusion of the election, including a runoff, by the end of the year. It varies only by two weeks from the projected time table set forth by the Secretary of Labor.

In view of the astronomical cost to the Organization in conducting its last election under the auspices of the American Arbitration Association (some $250,000.00), it was suggested to the Department of Labor that their supervisory role in this election be considered to be the "impartial balloting agency" within the terms of Article V, Section 3 of the International Constitution. The Secretary has indicated his agreement to such procedure and we would request a Court order providing for such a procedure.

We have also requested an order setting forth the period of time for Offshore Division nominations. The Offshore Division By-Laws provide for such nominations to be in the month of June.

A suggestion would be that the Court issue an order providing for a month-long nominating period to terminate with the time scheduled for the special convention, i.e., August 17, 1976.

Whether Members Are Entitled To Run For More Than One Office

The contention that the three international officers can not serve as executive officers of the Offshore Division has made this question a significant one. Heretofore, to my knowledge, this issue has not been presented at an election. However, if the Court were to uphold the Secretary's position, this issue might very well come up, since the actual duties of the International Officers *vis a vis* the Offshore Division would be placed in doubt. The Secretary, aside from simply declaring that the structure is invalid and suggesting that separate officers be elected as the executive officers of the Offshore Division, has set forth no suggestions as to what the duties of these new Offshore Division Officers will be, nor has he set forth what duties the International Officers will retain.

A Court ruling on this issue is necessary.

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There may be other matters which will become the subject of discussion at the time of argument on the Order to Show Cause. It is respectfully requested that your deponent be given an opportunity to submit additional papers on such matters, if it is felt that it would be of assistance to the Court.

WHEREFORE, it is respectfully requested that the Court issue an Order declaring that the present structure of the Organization as it relates to the three International Officers is proper and legal, and, further, that the Court incorporate into such order any and all directives whereby the International Constitution and By-Laws of the Offshore Division are to be amended, in conformity with the matters as set forth above.

Burton M. Epstein

Sworn to before me
this 1st day of July, 1976

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BALLOT

PROPOSED OFFSHORE DIVISION BY-LAWS AMENDMENTS AND POLL FOR NEGOTIATING CONTRACT AMENDMENT

This ballot was authorized by the Offshore Division Executive Council meeting held in Baltimore on October 19, 1973. All members of the Council attended and all of this ballot was duly authorized by the Council in accordance with the Offshore Division By-Laws.

PROPOSITION No. 1

LIMITATION OF MEMBERSHIP

Recognizing the fear prevalent among the membership that the membership rolls may be flooded by taking new members into the Union, the Offshore Division Executive Council unanimously passed the following resolution:

• • • • •

WHEREAS, the **Offshore Division By-Laws are** silent on the number of **applicants who may be taken** into membership **after the 1.5-1 job membership ratio has** been reached, and

WHEREAS, the **Offshore Division Executive Council** wishes **to ensure that the Division cannot be flooded** with applicants as **new members,**

NOW, THEREFORE, BE IT RESOLVED **that** an additional **sentence be added to Article II, Section 1(b)** reading:

"After opening the membesship rolls for the initial period, no more new members may be admitted to membership than the number of members who have relinquished active membership on a one-for-one basis."

YES ☐ NO ☐

PROPOSITION No. 2

REDUCED QUORUM REQUIREMENTS FOR MEMBERSHIP MEETINGS

The Council is aware that compulsory attendance at meetings is repugnant to IOMM&P members. However, the members of the Executive Council are desirous of frequent membership meetings in order to keep members abreast of Union affairs and to keep the Union officials current with membership thinking. In order to encourage more frequent meetings, the Executive Council unanimously passed the following resolution:

• • • • •

WHEREAS, Offshore Division By-Laws, Article VIII, Section 3, presently **requires "not less than 25%** of the membership **registered for shipping, with a minimum of 15 members, shall constitute a quorum** for the transaction of **business," and**

WHEREAS, **experience has shown that a change** in the percentage **previously ratified by the members** may be desirable,

THEREFORE, **BE IT RESOLVED, that the 25%** requirement be reduced **to 15% with the present minimum of 15 members for a quorum remaining unchanged.**

YES ☐ NO ☐

PROPOSITION No. 3

POLL TO NEGOTIATE CONTRACT AMENDMENT OF 30-DAY RULE

The Offshore Division Executive Council reviewed several complaints from members about the "30-day rule" and passed the following resolution calling for a poll of the entire Offshore Division membership:

• • • • •

"That a Negotiating Subcommittee be authorized **to negotiate amendment of the** "30-day rule" to permit **return to the vessel for the remainder of his** assignment **in case of layup if he has indicated his** intent to do so **in writing at time of payoff, files his** request with the **payoff port, and does not accept employment** under the **contract, including Port Relief Officer work."**

YES ☐ **NO** ☐

PROPOSITION No. 4

INCREASE REVENUE OF OFFSHORE DIVISION

The Offshore Division Executive Council made an exhaustive study of the financial condition of the Offshore Division. The letter accompanying this ballot explains in detail the bare situation. The Council voted unanimously in favor of the following resolve:

• • • • •

"Resolved: To amend the Offshore Division By-Laws to provide for the following additional membership dues: Six (6%) percent of the gross amount of each vacation benefit received for work performed on any MM&P-contracted vessel, and six (6%) percent of each vacation benefit received by every MM&P Offshore Division official.

The effective date shall be upon adoption."

READ THE IMPORTANT ACCOMPANYING LETTER EXPLAINING THE FACTS REGARDING PROPOSITION NO. 4.

YES ☐ **NO** ☐

EXHIBIT "A"

PROPOSITION No. 5

AMEND BY-LAWS IN ORDER TO FURTHER REDUCE EXPENSES

This Article was discussed for several hours and it was the unanimous opinion of all of the members of the Offshore Division Executive Council that the following amendments to the Offshore Division By-Laws are essential to prevent a further worsening of the financial condition of the Offshore Division and the Organization. For example, as the By-Laws now read, it can and has been argued that there must be three additional officials elected as Vice-Presidents. Further, as the By-Laws now read, the Offshore Division can find itself in the position of having to elect Field Representatives for ports already closed.

• • • • •

The Offshore Division By-Laws shall be amended wherever and in such respects as are necessary, to provide the following:

1. The three elected Vice Presidents shall not be in addition to the elected Port Agents.

2. The Vice President (Atlantic) shall be the Port Agent of the Port of New York; the Vice President (Pacific) shall be the Port Agent of the Port of San Francisco; the Vice President (Gulf) shall be the Port Agent of the Port of Galveston.

3. As economic necessity or as service to the membership may require, the Offshore Division Executive Council shall, by its majority vote, have the authority to close, reclassify or merge ports, and to designate all Field Representatives.

YES ☐ NO ☐

PROPOSITION No. 6

PILOT DIVISION TRANSFERS

The Pilot Division has requested the same transfer privileges as the Panama Canal member. The Offshore Division Executive Council unanimously passed the following resolution:

• • • • •

"Resolved: To amend Offshore Division By-Laws, Article II, Section 1(b) and Article XIV, Section 2 to provide that the rules pertaining to the transfer of Panama Canal Pilots to the Offshore Division be applied to those members of the Pilot Division who wish to return to sea."

YES ☐ NO ☐

BALLOT COMMITTEE

The Offshore Division Executive Council, at its meeting held October 19, 1973, in Baltimore, elected by acclamation the following to the Ballot Committee for the Ratification of the Offshore Division By-Laws Amendments:

Member	Alternate Member
William A. Beach	P. J. King
Francis E. Kyser	R. Casselberry
Orion A. Larson	R. J. Soriano

• • • •

PROPOSITION No. 7

INITIATIONS

Noting that the Initiation Fee for membership in the IOMM&P has not changed in more than ten years, the Offshore Division Executive Council unanimously adopted the following resolution to make the fee more realistic and commensurate with the benefits of membership:

• • • • •

WHEREAS, there has not been any increase in the initiation fees for new members since 1963, and

WHEREAS, the average income of our members has more than doubled during that ten-year period, and

WHEREAS, the pension benefits for an eligible member have increased manifold in the ten-year period, and

WHEREAS, the vacation benefits during that period have increased as much as five times aboard certain vessels, and

WHEREAS, the welfare benefits have been vastly expanded in both the scope of benefits and the dollar value of the benefits in that ten-year period, and

WHEREAS, the improvements in working rules and conditions have greatly increased the income and shipboard comfort of our members, and

WHEREAS, the Pension and Welfare Plan death benefits increase, the widows' option, and five-year pay out provisions have vastly improved the security of our members' families;

NOW, THEREFORE, BE IT RESOLVED, that the initiation fee for a new member shall be three months' base pay as provided under the then current contract. The base pay shall be as provided for Class A-3 automated vessels. The rate of base pay shall be at the license rating held by the applicant for membership. The license rating shall be such license held by the applicant at the time of his acceptance into membership. However, if the applicant prepays his initiation fee, then the license rating shall be such license held by the applicant at the time the full pre-payment is made.

The full initiation fee must be paid before any applicant may become a new member.

YES ☐ NO ☐

VOTING INSTRUCTIONS

1. Statement on face of the RETURN ENVELOPE must be completed and signed. (Signature and Social Security Number)
2. You must put your Ballot in the Envelope marked "SECRET BALLOT", and seal it.
3. Insert SECRET BALLOT Envelope in the RETURN ENVELOPE, SEAL, then mail.
4. Do not send checks, money orders, cash, etc., along with your ballot.
5. A duplicate ballot shall not supersede the original ballot voted.
6. In the case of lost or destroyed ballots, request forms for duplicate ballots can be obtained from any Offshore Division Union Hall.
7. **Ballots must be received by Thursday, January 10, 1974.**

EXHIBIT "A"

forward. Otherwise it is going to become moot.

THE CHAIRMAN: What appeal?

MR. CRYSTAL: The Hopkins appeal.

THE CHAIRMAN: We are going to do it, give it to the arbitrator.

MR. NEREAUX: Also the appeal on the forty percent.

(Whereupon, at 6:00 P. M., the meeting was recessed and the parties moved to the jurisdiction of the arbitrator for the submission of appeals.)

AMERICAN ARBITRATION ASSOCIATION

- x

In the Matter of the Arbitration

concerning

DISPUTED BALLOTS

INTERNATIONAL ORGANIZATION OF
MASTERS, MATES & PILOTS

- x

Case No.

1330-0039-74

140 West 51st Street
New York, New York,
December 30, 1974
6:00 o'clock p.m.

BEFORE:

BURTON TURKUS,

Arbitrator

BALLOTING COMMITTEE:

CAPT. ROBERT E. DURKIN, Chairman
CAPT. GEORGE V. EISENHAUER, Member
CAPT. EDWARD C. HAYS, Member
CAPT. S. K. SPRADA, Member
CAPT. FLOYD E. SMITH, Member

PRESENT:

as heretofore noted.

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he remove himself for bias.

THE ARBITRATOR: You've got a very small and narrow mind, Mr. Hall. But that doesn't mean that you may not be right some time. But I don't see eye to eye with you on this argument. There is no question about that.

MR. HALL: I have no objection to your not seeing eye to eye with me.

THE ARBITRATOR: Let me hear from this gentleman.

MR. MOHR: I think that we are beating the thing around the bush here. I think that every argument that is germane to this forty percent, et cetera, and so forth, has been repeated and repeated, become repetitious. I feel that the arbitrator, if such he is going to act, has got enough material to make a decision. And let's get on to other things that are on the back burner. He has heard all the arguments pro and con. I say let the arbitrator make a decision on this.

MR. ELIAS: At this time I would say that the Ballot Committee is exceeding their authority in a lot of these various matters and I would like to

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withdraw my objection to this forty-percent matter. And, also, I do not recognize the arbitrator.

MR. HAROLD: It's a little late.

THE ARBITRATOR: All right. Have we closed the argument on it?

My ruling is as I have argued it out with the lawyers in connection with these two sections that we are dealing with. My feeling is that a plurality is sufficient for the Offshore, taking both always into consideration: the International Constitution and the by-laws of the Offshore Division.

THE CHAIRMAN: Mr. Arbitrator, may I ask by that do you mean in the case of where there are several candidates for two or more positions, those candidates receiving the highest number of votes?

THE ARBITRATOR: The candidates receiving the highest number of votes, the plurality.

MR. HAROLD: Or, to put it differently, the forth-percent rule applies to three officers only: the President, the International Vice President, and the International Secretary.

THE ARBITRATOR: That's my feeling of those two constructions.

MR. HAROLD: Thank you; good night.

(Mr. Harold leaves hearing room.)

THE CHAIRMAN: Mr. Turkus, for our purposes now, what is your time schedule? We have to go back into hearing discussion and arguments on other challenges which affect the carrying --

THE ARBITRATOR: Why don't you convene tomorrow?

THE CHAIRMAN: You will be available at what time in the morning?

THE ARBITRATOR: You name the time you want to work and I will be ready.

THE CHAIRMAN: Gentlemen, I think this involves everybody.

We have agreed mechanically that everyone who wishes to stay with the security guard tonight have permission to so do. Is that correct, Bob?

MR. LIPPMAN: I think so, yes.

MISS ROBBINS: Yes.

THE CHAIRMAN: If a candidate opted to remain with the security guard, that's permissible?

MISS ROBBINS: Yes.

THE CHAIRMAN: What is the time element

wc

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

---X

W. J. USERY, Secretary of Labor, :
United States Department of Labor,
:
Plaintiff,
:
- against -
: 72 Civ 5031
INTERNATIONAL ORGANIZATION OF MASTERS,
MATES AND PILOTS, INTERNATIONAL :
MARITIME DIVISION, ILA, AFL-CIO,
:
Defendant.

---X

New York, N. Y.
July 1, 1976 - 2 p.m.

Before:

HON. CONSTANCE BAKER MOTLEY,

District Judge

Appearances:

ROBERT B. FISKE, JR., Esq.
United States Attorney
For the Plaintiff
BY: DENNISON YOUNG, JR., Esq.
Assistant United States Attorney

BURTON M. EPSTEIN, Esq.
Attorney for Defendant

THE CLERK: W. J. Usery, Secretary of Labor, etc., against International Organization of Masters, Mates and Pilots, etc.

Plaintiff ready?

MR. YOUNG: Plaintiff ready.

THE CLERK: Defendant ready?

MR. EPSTEIN: Defendant ready.

THE COURT: The plaintiff may proceed.

MR. YOUNG: I am Dennison Young, an Assistant United States Attorney, Southern District of New York, and I represent Mr. Usery, Secretary of Labor.

As your Honor may recall, on April 15, 1976, judgment was entered whereby the 1971 election of this defendant union's officers was declared void and a new election ordered pursuant to 29 U.S.C. 482. That election was to be conducted under the supervision of the Secretary of Labor as the law mandates.

Insofar as that election is now underway and the Secretary is now supervising a new election, we unfortunately are compelled to come to this Court to seek an order from this Court compelling the union to obey certain supervisory instructions of the Secretary of Labor.

The scope of supervision has been briefed and is in some papers that I have submitted to this Court in conjunction with our order to show cause papers. We briefed that issue in our reply brief from the summary judgment motion and again in our brief submitted to the Court of Appeals.

As your Honor may know, the union has appealed from your decision in certain respects, and that matter, having been argued already, is still pending before the Court of Appeals. Nevertheless, this Court has the authority -- indeed, we submit it must continue to have jurisdiction and authority -- to compel the union to obey your previous directives that a new election be conducted as expeditiously as possible.

The law specifically says that, pending appeal, there shall be no stay of the Court-ordered election. Accordingly, this election must go forward, and we ask your Honor to insure that it go forward properly.

With respect to supervision, the Secretary, pursuant to Section 482(c), must allow this election to be conducted consistent with the provisions of the union's constitution and bylaws insofar as they are, quote, "lawful and practicable." What that means is that the Secretary will issue various directives that coincide as much as they can with the constitution of the union, but where those provisions are illegal, unlawful, the Secretary will order they be modified.

In addition, where they are impracticable, where they would be inconsistent with an expeditious new election, the Secretary will order that the union come up with some plan or devise a new scheme to do away with those impracticable provisions.

In this case the Secretary has issued a series of orders. As you may recall, the election is to be completed by the end of this year, December 31, 1976. The Secretary has set forth a schedule, a timing of events. The union is supposed to come forward to make certain decisions that the Secretary has asked it to make by a deadline certain. And in essence, in order to keep the timing of this election as it was scheduled by the Secretary, in compliance with the Court order, we ask this Court now to insist that the union respond --

THE COURT: What is the date of the election?

MR. YOUNG: The election process is a long process in this case.

THE COURT: What is the date of the election?

MR. YOUNG: It is a three-month balloting period, your Honor, which at the moment is scheduled to begin in September.

THE COURT: That is what I meant: its beginning.

MR. YOUNG: But the nomination notices were supposed to go out by the end of June, this month, in preparation for all the processes that necessarily must follow. The nomination notices have to go out to the members to tell them that, Look, there is a new election about to take place pursuant to Court order.

THE COURT: And you have submitted to the union matters that should precede the election?

MR. YOUNG: Yes, your Honor.

THE COURT: I will hear from the union as to why this cannot be done or should not be done.

MR. YOUNG: Yes, your Honor.

MR. EPSTEIN: If your Honor please, I don't like to begin an argument arguing with my opposing counsel, but I think I must bring to your attention, as I have in the papers, that any delay that Mr. Young is speaking about is not a delay caused by the union.

THE COURT: I read that in your opposing affidavit just handed up.

MR. EPSTEIN: Yes. I was served with the order to show cause yesterday, and I must apologize for the lateness of my being able to get the papers prepared for you, but I only completed them just shortly before coming down to court today.

wc

The delay is not one caused by the union. It is not one that is being done wilfully or for any malicious purpose. If Mr. Young wants to ask Mr. Montrose, who is here, whether the union has been cooperating with Mr. Montrose on those supervisory functions that we have no problem with, Mr. Montrose will so agree.

We have had three meetings with Mr. Montrose. We have submitted documents to him for his review in accordance with that part of the Secretary's supervisory functions that say that in this period of time no material should be sent to the membership which might in some fashion constitute campaign literature. We have abided by that supervisory function. We have no quarrel with it.

Mr. Young says these things are supervisory functions.

THE COURT: What are you objecting to?

MR. EPSTEIN: First of all, the doctrines or the directives that Mr. Young and the Department have set forth constitute amendments to the constitution and amendments to the Offshore Division bylaws. Specifically, one of the complaints that the Department makes concerns the structure of the union, going to the basic setup by which the three International officers elected by the entire membership are by dint of such election also the executive officers of the

Offshore Division. This is a provision that is contained in the constitution, which was ratified by the entire membership. It is a provision which was contained in the Offshore Division bylaws ratified by that body.

It was an issue that has been in litigation, brought before the Court, in which we have maintained continuously our position that there is nothing violative of the law in this structure.

Mr. Young requested that the issue not be heard by you. It was a matter that we submitted to your Honor in our cross-motion for summary judgment. Mr. Young suggested that it not be decided at that time and suggested only that your Honor decide the summary judgment on the question of that campaign literature piece, which your Honor did do.

Throughout this entire litigation -- it is no secret at all -- we have maintained to Mr. Young that we feel that this structure is proper, it is not unlawful. It was briefed, it was argued very strenuously at the Court of Appeals.

For Mr. Young now to say that this is merely a supervisory function in which they are telling us how to restructure our organization is misleading the Court. This is a vital matter of vital concern to the union.

Mr. Young before this Court and before the Court of

Appeals has given no legal case in which it is said that either the Secretary or a court can restructure this organization in the fashion that Mr. Young feels is violative of law. Here is a situation where, for purposes of economy, for purposes of cohesiveness in the union, the union in its wisdom has chosen to structure, as I said, its organization so that the three top officers of the International are also officers of the Offshore Division. That is one complaint here. There is nothing in the statute that indicates that this is improper. Every member has had an opportunity to vote for the Offshore Division officials -- of the Offshore Division, that is; every member of the union has had an opportunity to vote for the three top officers.

The reading that Mr. Young gives to the statute, we feel, is completely improper. We have argued it at length. Mr. Young even suggested to the Court of Appeals that they could entertain this question and that they could render a decision on it. I don't know whether by that submission he has deprived this Court of the authority to render such a decision at this time, but at any rate it is a matter of great importance and I think it is a matter that we are entitled to have litigated and have a decision by the Court on it. It goes to the basic foundation of this union.

There are many reasons why it should not be overturned. It will throw into complete chaos the structure of the union as it now exists. Mr. Young, or the Department of Labor, in blithely suggesting that all we have to do is add three new officers to the Offshore Division, does not say what the duties of these officers will be, does not say what the remuneration will be. The remuneration specifically, according to the Offshore Division bylaws, must be voted upon by the membership of the union. Mr. Gumpertz said at the meeting, when we raised all of these questions before him as far back as March 24, "Yes, that is a very difficult problem that you have." And that was the end of it.

It is a matter of utmost importance to this union, and we should not be put into a position whereby the government's delay in holding the March 24 meeting, in waiting three weeks before they sent the letter telling us what the guidelines were going to be, when Mr. Gumpertz had said such a letter was going to be forthcoming in a few days, now comes to you and says it is our delay which is jeopardizing the timeliness of the election which your Honor has ordered to be held by the end of the year. It is absolutely improper for the government to make that statement to your Honor.

With respect to --

MR. YOUNG: Your Honor --

THE COURT: Just a minute. I will give you an opportunity to reply. I want to know what it is the union objects to and then you can reply.

MR. EPSTEIN: Well, that in particular, your Honor, constitutes a basic restructuring. It is a matter of great significance.

The other matters which again Mr. Young blithely says are supervisory in nature are not supervisory in nature. They constitute changes in the constitution and in the Offshore Division bylaws.

Mr. Young knows that this union is a very politicized union. We have a whole string of cases in which union officials have been sued by various rank and file members, not only these union officials who are sitting here now, but throughout the course of whoever is sitting as a union official, is constantly under pressure, is constantly under assault, by rank and file members who claim that in some fashion or another the union officials are going beyond the scope of their authority, are doing things which they are not entitled to do.

We have had two 501 suits that were brought in this court that have been settled. These officers cannot amend the constitution and cannot amend the bylaws by themselves. Even the Executive Councils, the General Executive Board of the International Organization of Masters, Mates and Pilots, cannot amend the constitution. The Offshore Division Executive Council cannot amend the Offshore Division bylaws. Were these people to either amend or even agree with the unilateral declarations of the Department as to what they feel should be done, these people are jeopardizing their own rights, are making themselves prone to a lawsuit by any number of individual members who for political purposes might want to sue them saying that they have gone beyond the scope and authority of their office. And that is a real problem.

I could give you a string of citations in which officers of this union have been sued in this court by rank and file members.

We have set forth in the letter of Captain Scavo, in reply to Mr. Gumpertz, those several points which we felt did constitute changes in the constitution or the bylaws that could not merely be acquiesced in by these officers. And we suggested to Mr. Gumpertz, and it has been suggested to Mr. Young, that for those matters which, let us say, seem to be procedural in nature but which do in fact alter or amend the bylaws or constitution, we would want an order from the Court directing that these amendments be made or these changes be made so that at least we would be able to insulate these officers from the claim that they were doing

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something unilaterally, not under the direction of the Court.

They are fairly well set forth in the reply papers, in my answering papers; they are also set forth in Captain Scavo's letter, which is the exhibit to Mr. Young's papers.

In my letter you will see, your Honor, in my papers you will see, that one of the items which is also of concern is a question of the positions which are to be elected in this upcoming election. The government has suggested that this election be for a three-year term of office. That would constitute a change in the existing bylaws of our Offshore Division. Because our regularly scheduled election is due to take place next year. If in fact the election took place this year, and it is to be for a three-year term, it is urgent that the Executive Council have an opportunity to review the offices that are now existing to see if there should be a contraction of those offices due to membership needs, due to finances of the organization.

We have had a preliminary meeting already with the Offshore Division Executive Council to discuss this matter. Financial material has been given to the members of the Executive Board, and we have a meeting scheduled for, next week, July 7 and July 8, to firmly take up the question of whether there should be a reclassification of some of these ports. If the notice goes out saying that certain jobs are up for office, after that notice comes out I do not believe that the Council could then say certain of them are knocked out, because a member would claim, Well, he thought he was going to run for the position of Assistant Port Agent-New York, that is what he got his petition for, and now you can't deprive me of my right to run for this office by removing this position from being elected.

At any rate, we would want your Honor to have the opportunity until some time next week so that we could give to Mr. Gumpertz the list of those positions which will be voted for in this election. But again these are more the mechanical kind of thing, the question of the three-year election. These are things that these individuals -- this is President Scavo, this is Vice-President Johnson, sitting here -- cannot so decide.

But aside from these other procedural matters, there is the very substantial issue of the complete restructuring of the organization that is something that should be, we feel, given some time by this Court for a decision as to whether or not it is in fact violative of the statute.

MR. YOUNG: Your Honor, there are quite a few points there that I would like to respond to, and I will try to be as brief as I can, aside from the personal attack.

Let me just explain that Exhibit C annexed to our papers, the letter of June 15, 1976, addressed to Captain Scavo by the Secretary's delegate, Gerald Gumpertz here, sets forth the various instructions, the ground rules for the election. Do you see it?

THE COURT: Yes, I have it.

MR. YOUNG: Without any more referene to anything that happened before that -- that is, whether the Secretary looked over a few documents and approved them or did not approve them -- the fact remains that here were the instructions and they were completely ignored, they were disobeyed.

In the letter of June 22, 1976, from Captain Scavo, the president of the International, back to the Secretary of Labor, he effectively says: "I can't make these decisions, the whole union has to make these decisions, unless of course the Court tells me I can make these decisions." That is what he is asking for. He says: "I won't make those decisions."

The question of the government's delay is unnecessarily considered, if in fact there was any, and the letters suggest to the contrary anyway. There was an instruction, "Please make some decisions by June 23, 1976, so we can get on with the election," and on June 22 a letter came back saying, "We can't make these decision and we won't."

And then they proceed to show how a number of issues here are up for still further question, according to the union.

The one issue that has been alluded to -- and it is a serious issue, and we don't deny that it is a serious issue -- is the scheme whereby the International officers of this union automatically become the three top officers of a separate labor organization, the Offshore Division.

Your Honor will remember in the case that you heard, the NMU case a number of years ago, a similar question arose as to whether certain officers had to be elected by a particular labor organization. At that time in that case, which was affirmed by the Second Circuit, your Honor ruled that certain officers were improperly appointed. They should have been elected. This case is very similar. That issue is very similar.

Here we have three officers elected by members from different divisions, each division being a separate labor organization, which is not denied by the union, automatically descending to become the three officers of the Offshore Division. We submit that the Offshore Division members alone, without votes from anybody else, they alone, should elect their own officers. What the scheme is tantamount to is the President of the United States, because he was elected by all the people in the United States, automatically becoming the Governor of the State of New York, merely because the people of the State of New York happened to participate in the President's election.

What we are saying is that, like the people of the State of New York having the right to elect their own Governor, so should the people in the Offshore Division elect their own officers. And that is what the law mandates.

Specifically, we have fully briefed this thing, incidentally, in our Court of Appeals brief, beginning at page 36, which has been submitted to your Honor and need not be elaborated upon much further. Suffice to say that the scheme is absolutely illegal.

I wish just to point out that the preamble to the Act itself says that the members shall elect, quote, "their own representatives"; that those sections which mandate elections shall be fairly read. We submit that labor unions have to elect their own representatives, and we submit that that scheme is illegal.

Whether this Court should decide it or should not should be based on the following: When we moved for summary judgment on the case as a whole, we explained that all the Court had to find for the Court to overturn the 1971 election was that there was one violation of 481. Indeed, your Honor found the Newsletter sufficient to rule that the 1971 election was void, and that was that. The union moved, among other things, for summary judgment on this particular scheme that we are discussing. They said, "Look, it's legal. Rule in our favor, Judge." We came back in our reply brief and said, "It's illegal. If you want to, Judge, go ahead, please decide it; but there is no reason that you have to decide that, because all you need is one of these other issues to decide that the whole election was to be voided." And during the supervision, which we are now in, this supervision concerning which we are now in at the moment, if the union disobeyed the Secretary's instructions to modify that scheme, well, then we will be back. Unfortunately, we are back, and we are telling the Court now that the union has disobeyed the Secretary's instructions.

THE COURT: How do you want them to modify that?

MR. YOUNG: We are willing to let the union tell us how they wish to modify it, as long as it is legal. In the absence of any decision by the union, we then say, "Well, look, you have three specifically named offices." They even call them different offices down at the Offshore Division. They are not called president; they are called executive officer, assistant executive officer, and financial officer. "Elect them." We were going to have a separate election for those three offices. The members have to now elect three people for those positions. If you want to call them Offshore Division president or vice-president, call them what you will. All we want you to know is that there now has to be an election because the scheme is illegal. If you want to decide to call them something different, let us know -- in this case it was by June 23 -- let us know by then, otherwise we will dream up some names for them. Call them A, B, C, or whatever.

I have to explain to your Honor that the issue is also before the Court of Appeals. The union when they appealed asked that court also to say that the scheme was proper. We came back and fully briefed the issue, saying it is illegal.

We also suggested that inasmuch as it is now a matter of law, that that court too could decide the issue. However, there is no assurance they are going to decide that issue, and there is no assurance at all, let alone if they will decide it, that they will decide it quickly.

What we are suggesting to your Honor is that to effectuate the purpose of this Act, that is, to have a new election now under supervision expedited, have it run quickly as the law clearly implies -- and in fact as we brief in our appellate brief is the law, that it has to be done quickly -- your Honor too should make these decisions and can make them now, and that you should decide that that scheme is illegal, tell the union, "Get on with making the decisions," and let the Secretary go ahead and supervise this election.

THE COURT: In other words, you have not suggested specifically to the union how this matter is to be handled. There was a suggestion, I thought, from the union's counsel that you were in effect directing the officers to amend the constitution. Is it in the constitution that these officers automatically become the officers of the Offshore Division?

MR. YOUNG: Yes, it is, your Honor. The constitution, Article IX, Section 8, and a whole variety of other sections, on pages 36 and 37 of our brief, specifically saying that the scheme is to have International officers automatically become the top three officers of all fully formed divisions. One of them is the Offshore Division.

There are two other divisions that are fully formed-- there may be others now that I am not aware of -- but the Pilots Division, the Inland Division. We can't reach those yet; they are not within the scope of this case. But the fact remains that here you have a labor organization, the Offshore Division, which has officers. They perform officer functions as defined in the Act, the executive functions, which is all laid out again in our brief there. Therefore, they must be elected solely by the members of the Offshore

Division alone.

We have suggested if the union can dream up another scheme that we may not be able to dream up and present it to us, we will look at it to see if it is OK for this particular election.

THE COURT: That is, if the members should be informed that the three top officers here would not automatically become, upon their election, officers in the Offshore Division. Is that what you want them to do?

MR. YOUNG: Well, not only information, but that also there will be a separate election among the Offshore Division members for those three top officers, for their own officers. They will also elect International officers.

There is another sub-issue in this whole thing: whether one member can run for both the International office and Offshore Division office simultaneously. We address ourselves to that in our papers. I just note in glancing over the respondent's paper there is some discussion in Mr. Epstein's papers as well. I don't know how it is handled, and I might have something to say about that further.

But on the basic scheme, this basic scheme, what I would like this Court to do is to declare the scheme illegal and to say that "Union, you must obey the Secretary's directives, as the Seventh Circuit has pointed out, at this stage in supervision. The Secretary's instructions are to be obeyed. The only standard for review is whether they are arbitrary and capricious. And we submit that even that suggestion should be obeyed.

But in view of the fact of all the proceedings that have transpired, it would be very helpful to have this Court rule that that scheme is illegal and that there should be elections for those three Offshore Division offices alone, unless the union within a very, very short time, like a week, should come back with some alternative suggestion. I cannot conceive of another suggestion. They must have the president, they must have some officers there, and they have to be elected. That is basically our position on that issue.

I will address myself further to that if your Honor wishes. There are very important duties these people perform. In fact, by allowing, and this is very revealing --

THE COURT: Let me ask you this: Are there members of the Offshore Division who are complaining of this?

MR. YOUNG: Originally, your Honor, yes. Originally, they complained of that. That was part of our original lawsuit. But it wasn't necessary for you to rule on that, as we explained.

Now it does not matter that you need a complaining person at this stage. You see, the law specifically says that the Secretary shall supervise an election. But the provisions which he uses as his guidelines have to be both lawful and practicable. That is a very important word in842(c). It says that if the provisions are not lawful, the Secretary cannot allow the election to go forward unless they are lawful.

So you don't need a complaining person. It happens that people did complain originally when the case first started.

I would just like to emphasize the significance of our point as to why that is illegal. If you think about it, your Honor, what has happened here is that people run for, let us say in the Offshore Division, run for International office. If they win, they automatically become effectively the president of the Offshore Division. What it really means is that somebody who does not win the majority of the Offshore Division votes can become the president of the Offshore Division by this descension route if he happens to have enough votes from the other divisions. Getting enough votes from the Pilots Division, for example, to overcome a minority number of votes that he may have received in the Offshore Division alone, he can become the International president, thereby become the president of the Offshore Division. We say that is totally undemocratic, it is improper, and as the Supreme Court has enunciated, union elections have to be based on the democratic principles as we know them in this country. That is also spelled out in the brief.

In fact, in 1974 precisely this fear that I just enunciated happened. The secretary-treasurer of the International, who won International office as secretary-treasurer, actually lost in the Offshore Division, but he got enough votes from the Offshore Division so that now he is the financial officer of the Offshore Division, and the members of the Offshore Division effectively did not even want him. They did not want him as International president; they certainly didn't, and one can assume they would have voted against him, for Offshore Division office.

If I may, I would like to just move on to two other significant points.

THE COURT: Let me ask Mr. Epstein a question, then, about this before you move on to these other matters.

Mr. Epstein, how is this case different from this Court's decision in the NMU case?

MR. EPSTEIN: Your Honor, in the NMU case it was simply a question of these people being appointed by Joe Curran. It was not a question that there was any election for these people whatsoever. These were appointed officials in the various ports, and due to the fact that they could only become appointed by reason of Joe's favor that they became officials of the union. There was no election whatsoever for these people.

Mr. Young talks about the president becoming --

THE COURT: Well, that is the government's position here, that the Offshore Division does not have the opportunity to vote for its own president and whatever these three offices are. Because even if they should vote against the man who becomes International president, and he wins, they nevertheless have to accept him as their president without a vote. Isn't that so?

MR. EPSTEIN: Your Honor, the statute does not require this type of a one-man one-vote kind of arrangement. Mr. Young talks about somebody by dint of being president becoming the Governor of New York State. Massachusetts did not vote for Richard Nixon, but Richard Nixon became the President of Massachusetts.

THE COURT: That is different from saying that he is the Governor of Massachusetts.

MR. EPSTEIN: Well, he had certain rights and he had certain duties and he exercised certain control over the people of Massachusetts, just as these individuals exercise certain control -- and it is not complete control by any means -- over the Offshore Division. There is an

Executive Council of seventeen members on the Offshore Division, of which the three International officers are only three. There is a one-man one-vote kind of arrangement there. They do not have any greater weight than any other individual --

THE COURT: What are these offices, specifically, of the Offshore Division?

MR. EPSTEIN: It is the International president, who becomes the chief executive officer.

THE COURT: What is the title?

MR. EPSTEIN: It is sort of questionable. I guess it is executive officer of the Offshore Division.

THE COURT: What is the next title?

MR. EPSTEIN: The next one is the International vice-president, who I guess is the assistant executive officer; and there is the third, the International secretary-treasurer, who is also the financial officer of the organization.

But, again, in the Council, in the governing body, these are three of a total of seventeen.

There are many reasons why it was done this way. In 1970 this was a brand-new kind of organization that the union went into. There were specific reasons why they did change the previous semi-autonomous structure of the union, whereby the International officials did not have the power or did not have the influence or did not have as much say-so, or did not even sit in the Offshore Division group as they do now. The union had a very difficult problem at that time. They needed a certain type of cohesiveness, which they felt could be given by having this type of arrangement. It was voted for by the entire membership; it was voted for by the Offshore Division. The Offshore Division voted for its own bylaws and specifically affirmed this type of arrangement. For the government to walk in --

THE COURT: What year was that?

MR. EPSTEIN: This was in 1970, in October of 1970. For the government to come in and impose its own views, absent a specific statutory authority for it and absent any cases that say that this is wrong --

THE COURT: That is why I asked him whether anybody had complained in the union, and he reminded me that initially, in order for the Secretary to raise this, somebody must have previously complained to the Secretary about this arrangement.

MR. EPSTEIN: If your Honor please, we have at the present time at least 5,000 members in the Offshore Division who are all licensed officers, who all have the ability to read and write English. They are all very politicized. They will find fault with the structure. The mere fact that one individual complains about it or two or ten or fifty does not automatically mean that it is violative of the statute. And there is no case that says that this type of pyramidal structure is violative of the law.

It is not the NMU case. These people are not appointed. They are elected by the entire membership. They do have certain rights to sit on the Executive Council of a particular fully formed division; they have certain administrative functions to perform. That is correct. But again that is within the wisdom of the union for it to decide how it needs its cohesiveness, and it is not merely the whim of the government, thinking in some sort of ultratechnical view, which I cannot see in reading the statute that requires what he says it does. This can lead to --

THE COURT: If these three International officers became members of the governing council, if they became three of the seventeen members -- did you say?

MR. EPSTEIN: Yes, your Honor.

THE COURT: -- as opposed to being the three top officers, we might have a different case. But it seems to me a very strong case for the government's position if these three officers of the International become the three officers of the Offshore Division and therefore effectively control it.

As I have indicated, if they were simply members of the governing council, like the board of directors, where they would have some input and --

MR. EPSTEIN: But they don't effectively control.

THE COURT: The three top officers do not effectively control?

MR. EPSTEIN: Not at all, not at all. They have certain responsibilities in the Offshore Division, but that is purposely done, because what the Offshore Division does want: the head of the entire group not only to be able to speak as three parochial officers of the Offshore Division, but they are speaking as president of the entire organization. This organization has an Offshore Division, it has a Pilots Division, it has two regions of an Inland Division, we have two locals in the Canal Zone, we have a provision for a Shoreside Division to be formed, we have provisions for a Governments Division to be formed. The plan was exactly to have the three top officers exercise some sort of responsibility in each one of the fully formed divisions.

THE COURT: And you say, with respect to each of these divisions, this arrangement obtains; is that it?

MR. EPSTEIN: It does, through the fully formed division. Now, that is another anomaly.

THE COURT: Through the what?

MR. EPSTEIN: The fully formed divisions. We have only at the present time two of them: the Offshore Division and the Pilots Division.

THE COURT: So that these three top officers automatically become the top officers of those two fully formed divisions?

MR. EPSTEIN: Yes. And depending upon --

THE COURT: And eventually, as other divisions become fully formed, they will similarly become the top officers?

MR. EPSTEIN: Yes. But it is a question as to exactly how much function they do have with regard to the Pilots Division or with regard to -- well, that is the only one that is fully formed at the present time. But again this was purposely done. This was done for a reason. This is what the union in its wisdom --

THE COURT: What was the reason?

MR. EPSTEIN: The reason was that they were splinter groups. Before 1970 we had a situation whereby each local of the union elected its own particular officers, set its own officers' salaries, and was responsible to and the officer was only responsible for his particular parochial group. There were many abuses that were caused by this.

When officials had a problem between one of their members and, let us say, a member from another local who, because he was on a vessel happened to find himself in the port, in a different, in an alien port, obviously there could be a problem if there is a dispute between one of the man's members and somebody who does not vote for him. The union felt this was wrong. It was splintering the union. It was necessary for a complete restructuring of the organization to get more -- what should I say? -- to put more emphasis in the top-to-bottom structure of the union rather than parochially from the bottom, jealously guarding all of their parochialism and only giving tidbits and only giving tokenism to the three International officers. It represented a complete change in the theory, in the thinking of the union.

Incidentally, had that change not been done, who knows where the organization would be at the present time.

The other maritime unions had many years before done exactly this, that is, placed its International officers with the greater authority over the subordinate bodies, instead of having the subordinate bodies having the authority and giving directions to the International office. The MEBA, Marine Engineers Beneficial Association, had done it many years before; the NMU, the SIU. This was the last union doing it. It was a question of the IOMM&P becoming a dinosaur. If they did not do it, they would not survive.

THE COURT: Is this an anomalous situation in the labor movement generally? That is, do other labor unions have this kind of structuring?

MR. YOUNG: Your Honor --

THE COURT: Just a moment.

MR. YOUNG: I thought you were looking at me.

MR. EPSTEIN: Your Honor, I do not know any situation where you do not have some sort of pyramidal structure, whereby individuals who are elected either by convention, who then become the top officers and do exercise some sort of control, or some sort of rights within the separate local organization; that has never been challenged.

THE COURT: No, that is not what I am asking you. I am asking you whether there are other labor organizations that have a similar structure, that is, the three top International officers by reason of their election automatically become the three top officers of some independent or separate division of the union. Is that true beyond --

MR. EPSTEIN: I would suggest that in the MEBA --

THE COURT: The what?

MR. EPSTEIN: The Marine Engineers Beneficial Association, that is what exists.

THE COURT: I am saying beyond this particular industry.

MR. EPSTEIN: I could do some research on it, your Honor. Offhand it does not come to mind. But I can't believe that there is not this type of structure -- I have seen no case at all where there has been a challenge of this nature. The cases that are cited don't go to this kind of a situation at all. The NMU case is completely different. In the NMU case there is no election whatsoever. There is no way of reading the statute or legislative history that compels what the government says is clear. It just isn't there, it just is not there.

THE COURT: And this, you say, became the organizational structure in what year? 1970?

MR. EPSTEIN: In 1970.

There were people who did not like the officers --

THE COURT: And therefore this was after the NMU decision, is that it, when this modification was made?

MR. EPSTEIN: I don't recall the date of your decision in that, your Honor.

MR. YOUNG: Your Honor, the Second Circuit's opinion was 1968.

MR. EPSTEIN: But again that was a case where these people were not elected, they were appointed. There was no election whatsoever. There is no case that holds that this type of pyramidal structure is forbidden by the statute, or forbidden by logic, or any reason why the government --

THE COURT: But you admit that in effect, since you can cite no other similar situation, this arrangement is unique in the structure of labor organizations.

MR. EPSTEIN: I can't say it is unique, your Honor. No, I would not say that. I just don't know offhand, other than in the MEBA, where there is this type of situation. But I cannot see how, given the existence of any one of these large International organizations where they have separate locals who file their own separate LM2 forms, who have their own organizations, do not in turn have delegates to a convention, whatever, which delegates then elect a president, who then has many rights with respect to any one of the particular locals. It just happens. There is this pyramidal structure.

THE COURT: To close this out, you agree, don't you, that it is quite possible, as the government suggests, that with respect to this Offshore Division the three top officers of the International can receive no votes from that group but are elected with the votes of all the other members, and then as a result of that they become automatically the three top officers of the Offshore Division.

MR. EPSTEIN: Your Honor, the Offshore Division is by far the largest division. There are some, oh, 5200 or 5500. The entire membership of the balance of the union is some 3,000 additional, something like that. There is no possible way that without any votes in the Offshore Division these people could be elected. It is possible, as Mr. --

THE COURT: Let us say 3,000 of them vote against the people who ultimately become the top officers.

MR. EPSTEIN: Yes, it is possible that an individual would not necessarily receive -- and it happened in the last election -- the plurality, let's say, of the Offshore Division, and yet was elected to the presidency. But again that is what the constitution and bylaws contemplated and agreed to, and there is nothing in the statute --

THE COURT: I understand that, but the issue is whether that is --

MR. EPSTEIN: Violative of the statute.

THE COURT: -- consistent with the broad purposes of the Act to promote democracy in the unions. That is consistent, you think, with the broad purpose of the Act?

MR. EPSTEIN: Absolutely, your Honor. It is not a question of no vote going to these people. And when they do assume these roles, they are three of seventeen. There is a General Executive Board.

THE COURT: No, they are not three of seventeen, really. They are the three top officers, in addition to being three of seventeen. Isn't that so?

MR. EPSTEIN: Yes, that is correct. But that is done for substantial administrative purposes. The Offshore Division has its headquarters at 39 Braodway. That is where International has its headquarters. It is done purposely for another reason and that is to save on finances, whereby the International officers can act as the executive officers of the Offshore Division. Anything that these three officers or any one of them does in his role as that particular executive officer can be overruled and ruled out by the Offshore Division Executive Council. These are administrative functions that they perform. They have the right to sit in council with other union heads. It adds support and weight to the bona fides of the Offshore Division.

THE COURT: As you point out, these unions are, and I guess that is true of all organizations, highly political, in the sense that the man who is the president or vice-president, or the high officer in the group, has certain powers and I guess privileges which go with the office, which allows him to have influence not comparable to the influence of the other seventeen members of that body, isn't that so?

MR. EPSTEIN: Which is what the body politic of the organization desires for its own survival, for its own necessities. That is what they wanted to do and that is what they did. Unless it is clearly statutorily prohibited, neither the Secretary of Labor nor the [illegible] should interfere with the structure that the union in its wisdom has chosen to form.

This is not the kind of a case where the union has created certain requirements of membership, attendance at meetings, or whatever, to be eligible to run for office.

THE COURT: What would be wrong with the union saying at this juncture that, since this arrangement is seriously challenged by the government and is pending before the Court of Appeals, the matter ought to await the decision of the Court of Appeals or, if it is sent back to this Court for decision, the decision of this Court, and at this point the three International officers will be elected only for that position. If the Court should rule in their favor, they will then become the three chief officers of the Offshore Division. If the Court should rule against them, then of course it would have to be a separate election for the three top officers of the Offshore Division. What is wrong with the union saying that at this juncture, so that the election for these offices can go ahead?

MR. EPSTEIN: But, first of all, I don't think that is what the government wants. I think the government must insist --

THE COURT: Then I misunderstand the government.

MR. EPSTEIN: The government insists that in this election there be separately elected positions of executive officer --

THE COURT: For the Offshore Division?

MR. EPSTEIN: -- for the Offshore Division.

THE COURT: I see.

MR. EPSTEIN: In addition to there being elections for the three International officers. They want to now say there must be three more people who are going to be voted for by the Offshore Division, and they are going to, I assume, strip the International officers of the rights which they now have vis-a-vis the Offshore Division, that is, they will not have a right to sit on the Executive Council -- and I am not really certain. They do not spell out exactly what --

THE COURT: Let me ask Mr. Young what would be wrong with the union doing that, saying to the union what I have said, that this question will be resolved by the courts and later will have an election for the three top offices of the Offshore Division, depending upon how the Court decision goes, so that the rest of the election go ahead.

MR. YOUNG: It seems probable, your Honor, but in fact if you follow it through, this is what happens. It means that the --

THE COURT: I can't hear. There is somebody talking.

MR. YOUNG: Unfortunately, what would happen by that arrangement is that there would be no decision either here or necessarily above for a period of time, whatever time that is. That would mean that there would be no officers elected by the Offshore Division alone for a period of time, which means that there are no officers who are supposed to be elected by them. It means, in our contention, that since they are supposed to have officers, until we wait for some decision they have no officers, except by this illegal scheme. That is precisely what we are trying to avoid here.

I am just afraid that if we delay, and I don't know how long the Court of Appeals is going to take to decide this --

THE COURT: When was it argued?

MR. YOUNG: It was argued June 18. It was argued on an expedited appeal basis too. So it would seem the longer there is delay --

MR. EPSTEIN: If I may say so --

MR. YOUNG: -- in my humble opinion it may mean that they are not going to decide quickly. It would seem to me if they are going to decide some of these important issues -- I mean, they would have decided them quickly if they are going to be adverse. But I have long learned not to overread the Court of Appeals in what they are going to do. But the fact remains that we don't know when they are going to decide that case, and it means that there are no officers then who are properly elected by the Offshore Division. It means that in fact the scheme is maintained.

Let me just emphasize that these officers perform extraordinarily important functions. They negotiate the contracts for the Offshore Division as well as disburse the funds and do all of the major functions, what is called executive functions of union officers. Again, all this is spelled out and I respectfully refer your Honor to our brief.

The sum and substance of this whole thing is that the labor organization is entitled to have its own officers who in fact perform the very functions for which there are unions in the first place, collective bargaining and governing rights. If what your Honor suggests is done, if we were to delay, they would not have officers elected by the Offshore Division alone.

I will consider that with the Department again and get back to you by tonight. But the fact is that I am giving you my opinion as to why that scheme perhaps is not palatable at this time.

If you remember, the whole purpose of the Act is, once there is a court order, you have to have a new election quickly. Admittedly, the court order did not reach that particular scheme, but in fact we now have to go forward with election, and the Secretary in his expertise decided that that scheme is improper.

Incidentally, to my knowledge --

THE COURT: Then the issue before the Court now is whether this directive of the Secretary is reasonable, that is, not arbitrary.

MR. YOUNG: That is actually the law, your Honor, but I think this is a little more important.

THE COURT: I am getting at the basis on which this Court could decide any such issue at this time.

MR. EPSTEIN: I believe that is not correct, your Honor. I believe this Court -- and it is cited in Mr. Young's brief -- must adjudicate the issue as to whether that bylaw is violative of the Act or not violative of the Act. It is not a question as to whether the alternate scheme that the government suggests is reasonable, is not arbitrary, is not capricious. Mr. Young has cited in his brief to you on the issue in summary judgment, which was, I guess, the beginning

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of this question as to even whether, once the Secretary does supervise an election, he can go beyond those particular complaints brought to his attention on which he based his lawsuit and indeed now more or less go search the record and look in the bylaws, in the constitution, and see whether anything else there is bad.

Justice White stated -- and it appears at page 70; I assume Mr Young has handed this up to you:

"If the Secretary finds an invalid bylaw that purports to govern a new election that has been validly ordered on a claim that has been exhausted as in this case, the Secretary appears to have express grounds in the Act, independent of the complaint-exhaustion requirements, to insist that the new election be conducted in accordance with the law and to insist that a court adjudicate the matter if the union stands by its bylaw provision."

That is the clear mandate of the Supreme Court of the United States. It is not a question of whether their alternate plan -- reasonable, arbitrary, it sounds good, it's going to accomplish something -- but it is whether what the union itself has chosen to do by its membership vote is violative of the statute and violative of the cases. And we claim that it is not.

MR. YOUNG: Your Honor --

MR. EPSTEIN: May I make just one other point with regard to the time. Your Honor may or may not recall that after your Honor rendered her decision on the summary judgment motion, alternate judgments were submitted to you with respect to when this election would take place, supervise election. The government urged that it take place by the end of this year. The decision was rendered, I guess it was, in March, and the judgment finally entered in April. We suggested that the election supervised be held next year to coincide with the union's regularly scheduled election that would eliminate many of these other problems about special notices to the Offshore Division, that now there is suddenly going to be a quick election, if you want to run you got to run; to suddenly rush to have the Offshore Division Executive Council decide now whether they should downgrade ports in contemplation of something that is going to take place three years hence; whether we will have a special convention called so that there can be nominations for the three International officers, since that is one of the ways in which the three International officers can be nominated, aside from the petition route.

We urged this to your Honor. Your Honor chose to hold it this year. We have urged this same point to the Court of Appeals. Aside from appealing from your decision, we have urged that, at any rate, a modification could be made in your order to have the election take place next year in connection with the union's regularly scheduled election. These officers have held election for two years. And these officers, incidentally, have held election in a 1974 election wherein this issue of the campaign literature, which your Honor decided the summary judgment motion on, that was the 1971 election. Since that time there has been almost a complete reversal of the officers in this organization. Captain Johnson was not even an officer in the 1971 election which your Honor found to be tainted by that piece of campaign literature. He ran as a shining knight coming out of the wilderness on his charger. "I am Mister Clean. I am running in 1974." He was elected. No spots on Mr. Johnson. And now he finds himself suddenly cut short in his prime. He has two years, and now he is going to be cut short and must run for election again this year rather than next year.

Captain Scavo was not the International president in 1971 during the election which your Honor found to be tainted. He ran again. He was a knight. He came on his white horse. He defeated Captain O'Callaghan, whose literature it was that your Honor found was campaign literature and tainted the 1971 election.

So we have a situation, your Honor, although we had

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argued it to you previously, we have argued it to the Court of Appeals --

THE COURT: The Court had previously ruled on that.

MR. EPSTEIN: Yes, your Honor.

THE COURT: It is settled law that you are arguing now.

MR. YOUNG: Your Honor, the quick answer to the reasonable and arbitrary and capricious question that you asked is that that was a statement by one Supreme Court Justice. That judge was just explaining what he thought the law was. Now we have, in the Seventh Circuit, then Circuit Judge Stephens has specifically laid out a standard in Brennan v. Local 551, which is cited all over our papers, in our most recent order to show cause papers as well, and that decision said Yes, the Secretary's instructions must be obeyed, they must be heeded, unless the decisions are arbitrary and capricious.

You can read it yourself. It just goes on and on about that. It has been followed in at least one court that I am aware of, in a Puerto Rican court, a District Court --

THE COURT: That dealt with a similar issue?

MR. YOUNG: It dealt with campaign spending. As a matter of fact, it has certain similarities, yes. As a matter of fact, there are certain similarities. But it did deal with the supervision question, yes, same type of issue.

THE COURT: Well, I gather that is one way of dealing with it, that is, it comes before me for review as to whether this particular directive is arbitrary and capricious on the part of the Secretary in connection with this new election or as a question previously undecided when the case was before me and not reached. Is that it?

MR. YOUNG: The union has suggested that the whole case be remanded back to you from Second Circuit on the basis that you failed to decide this issue. That is clearly absurd under the scheme of this Act. You have two hats. You have the decision-making hat originally and then the supervisory hat. And you could have decided it then, but you did not have to. In either case, whether it is arbitrary and capricious or whether you wish to review this de novo, we submit that you will not reach another decision. This is a labor organization that has officers. Neither one of those points denied by the union.

Secondly, whatever the reason for forming this scheme back in 1970, which has now been used for six full years, including another election, the fact is that it is illegal, it is contrary to the Act.

What Mr. Epstein has avoided saying is that they tried to concentrate power in the International officers.

There is nothing wrong with concentrating power if it is done properly. In fact they have done it improperly. And the MEBA, to my knowledge, does not have the identical scheme. I might stand corrected on that, but I remember inquiring once of the Department of Labor, and I was told it was not similar.

THE COURT: Does the Department of Labor know of any similar organization?

MR. YOUNG: My inquiry, which was quite some time ago now, was that there was no identical situation. Identical. I will make a call as soon as we are done with oral argument.

THE COURT: I seem to remember from the NMU case that that situation was unique.

MR. YOUNG: Yes, that was there, too.

Just so your Honor understands that with respect to the timing of this election, you did rule, you decided, that the election should be held by the end of this year, and that is entirely proper. It is proper, it is consistent with the Act, it is consistent with all commentators on the Act to say elections should be held expeditiously, once the Court rules they should go forward.

THE COURT: It seems to me in the NMU case we did have proceedings which took place here also following the main decision that there should be a new election.

MR. YOUNG: That is right. I am advised that there were some follow-up supervisory questions before your Honor.

THE COURT: Were those reported? I don't recall.

MR. YOUNG: To my knowledge, they are not. I checked with the Labor Department. We will have any material with respect to the NMU cases as soon as we can get it.

MR. EPSTEIN: If your Honor please, under this time pressure I appreciate what Mr. Young is saying and what your Honor ruled, but still, whatever the time pressure, we cannot be foreclosed, I don't think, from our right to have the issue adjudicated. That is what Justice White said. It is not a question of reasonable --

THE COURT: You raised it. That is what I am saying. It is already before me in the sense that it was raised in the main action here, which led to this decision.

MR. EPSTEIN: Yes, your Honor, but --

THE COURT: So I don't know what you mean when you say you have the right to have it adjudicated. You mean the Court to rule on it?

MR. EPSTEIN: I say yes, the Court to rule on it, but not in the fashion that I thought your Honor was saying as to what the burden is, whether it is merely arbitrary or capricious. If your Honor was talking about the burden that the government must show, that all they need show is that the scheme that they propose or what they say sounds pretty good, and so long as what they say is not violative of the law and does have some validity, so long as it is not arbitrary or capricious, then the government must prevail. That is not what the Court must decide. The Court must decide --

THE COURT: In order to decide that, the Court would have to decide that it is not arbitrary or capricious because, as the government argues, it is violative of the --

MR. EPSTEIN: No, your Honor, I beg to differ. Not because the government claims it has some sort of expertise here and that, absent any arbitrariness or capriciousness, their expertise will prevail. That is exactly wrong. It is to the contrary. The Court itself must independently decide whether or not this scheme is violative of the statute or not violative of the statute. Mr. Young has been using this word "scheme." I don't know whether he has a double entendre there. But, at any rate, the system that the union has chosen. It is not their expertise to decide whether it is arbitrary or capricious. Because this scheme was before your Honor at the original time of the summary judgment. They said it was bad. We said it was good.

Your Honor at that point could not rely on merely what the government thinks is correct and say unless they are arbitrary and capricious they prevail. That was an issue that was joined. One plaintiff against one defendant. Your Honor must decide it on the merits, not giving any greater weight to the government. By your Honor not deciding it at that time, I cannot see how now the same issue in a subsequent proceeding, suddenly there is less of a burden on the part of the government to prevail in this case. That would be a perfect way of finessing every issue by simply saying, "I will take my best shot, and I will only charge my best shot in court, because I know I can win on that." And then, once I get my hooks in, "Now, wait until you see what I have planned for this union." And I can only be overruled if I am arbitrary or capricious. That is absolutely not what the statute contemplated.

MR. YOUNG: Your Honor, even if you wish to decide this on some other standard, may I remind you that the standard would still be that once a prima facie case is made out, the burden is on the defendant to come forward and disprove that it did not affect the outcome of the election.

Be that as it may, no matter what your Honor decides the standard of proof should be here, the fact is that the scheme, we submit, is unlawful, and therefore once we prove that it is unlawful, it must satisfy the arbitrary and capricious standard and it must satisfy any other standard.

THE COURT: That was what I was getting at. How do you decide in this instance the Secretary is not being arbitrary and capricious, without looking at his claim that the statute is illegal?

MR. YOUNG: Your Honor, I can only submit at this time that if you have a moment to look over the briefs --

THE COURT: I think we should take a recess. It has been more than an hour that we have been here. The reporter is entitled to a rest. We will take a ten-minute recess.

(Recess)

THE COURT: I have taken the time to read the various portions of the brief in the Court of Appeals, which the parties have handed up.

Did you want to say something finally?

MR. YOUNG: Yes, your Honor. I had just two more points on that particular issue. One is that your Honor asked the question Why couldn't we delay and wait until the Court of Appeals rules, to determine whether or not the three separate offices of the Offshore Division should have a separate election? In fact it would seem that the better proposal might be to actually go through with the election, and if we should lose, the government should lose, then just void that portion of the election and let the descension scheme automatically take place.

What I am afraid of is if, as your Honor suggested, we go ahead with the election of the national officers, hold in abeyance the election for the three top officers of the Offshore Division, if the government wins that means you have to have yet another election the following year, and the union, complaining about all kinds of costs involved in the election, would be undoing its very own argument by supporting such a proposal.

What we are suggesting is that -- we would appreciate your ruling in our favor, of course -- you should not delay that ruling in ruling no matter what, because it is a much easier proposition to undo that election rather than to hold another election.

You seem puzzled, but what I am suggesting is: Go ahead and have separate elections for both International officers and the Offshore Division top officers, and if the Court of Appeals should rule against us, then the three officers of the Offshore Division, the three positions, would be nullified.

THE COURT: Did you want to say something, Mr. Epstein?

MR. EPSTEIN: Yes, I appreciate that each counsel thinks he is sanguine and he is ultimately going to prevail when the Court of Appeals does render its decision, but the alternate scheme that Mr. Young gives would create more havoc and more chaos than absent a judicial determination at this point.

He has told us that he wants these three additional offices, and he is now suggesting that don't rule upon the merits of --

MR. YOUNG: I did not say that.

MR. EPSTEIN: Maybe I misunderstood it. But the practicalities of such an arrangement at this point, where he is saying, "We now have three new officers, let's vote for them": These new officers have no salary whatsoever. These new officers have no duties defined by order of the Court. Yet the membership is going to vote for these three officers. We are going to get somebody who is a night mate in one of the ports, who figures, Well, I may as well run for president of the Offshore Division. There is no salary, but I may as well take it anyway. Are you going to find somebody who is devoted to the union, who is willing to give his time and effort to run for a nonpaying office? That is just one of the many problems that is created by the government's insisting on having these three new officers voted upon now, without telling the union or without anybody

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being able to tell the union what the duties and responsibilities and the interplay between them and the officers are going to be.

The statute speaks about, in the conjunction, lawful and practicable. If there could be anything less practicable than what the government is suggesting, leaving all of these loose ends somehow as the responsibility of the union that we will be able to work it out, that is a horrendous thing, it is a chaotic condition that is being thrust upon the union at this point.

MR. YOUNG: Just so it is clear, the question of whether they are paid or not is a union question. We don't insist that they do or don't be paid. But the union can make its own provisions as to being paid.

That leads right into the next and the first issue that Mr. Epstein put in his papers. They say they can't act. That doesn't make any sense at all. If this Court's order is to have any effect whatsoever, somebody has to act. The union has to take charge by its officers or some duly elected council within it to make the decisions that are absolutely necessary. To do otherwise would be to frustrate the purposes of this Act. To mandate decision by union membership would mean you would never get any decision for ten years.

THE COURT: I think we have exhausted the issue now.

I have taken the time during the recess also to review this Court's decision in the National Maritime Union case and, as I indicated earlier, it seems to me that this is an arrangement similar to the arrangement in that case with respect to the election of port officers and port agents, as I believe they were called in that case, port agents. Just as that arrangement in the National Maritime Union case violated the provisions of Section 481(a), it seems to me the situation here is similar,in that the officers of the Offshore Division are not elected as required by that statute. So that the Court now rules that that provision is invalid.

With respect to the other matters, if we can take those up, the Court will try to similarly dispose of those.

MR. YOUNG: Thank you, your Honor. If you wish, we will go through our Exhibit E seriatim, which should take care of most of the issues.

MR. EPSTEIN: If your Honor please, may I just be heard on that for one moment?

THE COURT: On what?

MR. EPSTEIN: On your ruling.

THE COURT: We have heard it. I am not going to permit any argument after I have ruled. We have heard it extensively.

MR. EPSTEIN: I am not going to argue. I am asking:

What now, if the Court of Appeals does come down with a decision on this very issue, which was tendered to them by Mr. Young, and that decision is contrary to your direction at this point?

THE COURT: That decision of mine would be overruled, I would think, as is any decision by this Court contrary to a ruling of the Court of Appeals.

MR. EPSTEIN: Thank you.

MR. YOUNG: Your Honor, we will advise the Court of Appeals of your decision, so that they have a full understanding of what has transpired.

THE COURT: All right. What is the next matter?

MR. YOUNG: The first issue, that we have marked as the first issue, is the question of the union authority to act. I think it is clear from the papers that what the union is concerned about is additional lawsuits from other members, if in fact the union leadership takes it upon themselves to act.

We submit that somebody has to act for the union, some entity, like their General Executive Board or their three top officers, which is called their International Subcommittee. And all we are asking for now is a direction from the Court that one of these bodies duly delegated to act according to the constitution as we spell out here in our papers should be compelled to make the decisions that the Secretary asks of it. We don't have to go back for unionwide referendum on each and every little issue, which is what was suggested here. It would be foolhardy to think that your order could ever be effectuated if we had to go back for a unionwide referendum. Indeed, the union contradicts itself when it shows in its own papers that the Offshore Division's Executive Council, a body that has authority to act on behalf of the Offshore Division, is now in the process of acting on some of the Secretary's instructions.

What we think is reasonable instruction, your Honor -- and I don't know if you would welcome this -- is that we would like at least the General Executive Board to make the decisions, or at least decide which entity, whether it is the president of the International or the three officers by majority vote, make those decisions that the Secretary requests of it, such as whether there is going to be a special nominating convention or not. What we have done here is just lay out where the authority exists, in our brief. The General Executive Board has, as the constitution says, full authority to act on behalf of the constitution --

THE COURT: Where are you reading from?

MR. YOUNG: Our Exhibit E. I have just been excerpting from the constitution itself, Article VI, Section 4.

THE COURT: What page? What page of E?

MR. YOUNG: Page 1.

THE COURT: I see.

MR. YOUNG: Under "Comment" section. The General Executive Board permits the union to act on all matters related to the welfare of the organization and shall decide on all questions of law. It goes on to say that the GEB is organized to supervise the activities, affairs and functioning of the affairs of the organization. Clearly some entity in the union has to be able to act. You can't just have a headless union there.

THE COURT: What specifically do you want them to act upon, now?

MR. YOUNG: As you notice, we have summarized those decisions, those questions we have asked the union to rule on, in Mr. Gumpertz's letter, which is Exhibit C. That is the Secretary's instruction letter. And if you will note on pages 9 and 10, we summarize those decisions that we had hoped to have by June 23. Each one, again, is taken up in our exhibit, and we have explained the nature of the question involved and the decision to be reached.

THE COURT: All right. I will hear from the union.

MR. EPSTEIN: Again, your Honor, I do not see, as my papers stated, how these specific items can be taken up by either one of the two governing bodies, where it requires a change in either the constitution or the bylaws.

THE COURT: What does?

MR. EPSTEIN: For instance, any one of these. "Decision to be received" -- and I am looking now at page 9 of Mr. Gumpertz's letter, item No. 1. "Decision to be received by this office not later than June 23 as to the titles to be carried by the three principal officers of the Offshore Division." It is the creation of a new officer in the Offshore Division. Simplistically saying "What are the titles?" leaves a tremendous gap as to what these people are supposed to do.

THE COURT: What are the titles now?

MR. YOUNG: The executive officer, assistant executive officer, and financial officer. This happens not to be a crucial issue. All we said is "Union, if you want new titles, let us know." That is not one that is particularly important. However, it is misleading to say that it leaves a big gap. This is the whole issue of descension, what the scheme that you just ruled on was. The question was that, since we had believed it was illegal, now you are going to have officers, we are willing to let the union decide whether you want to call them Offshore Division president, vice-president or something else. That is a minor decision.

When you go on, you begin to see some of the others that become more significant.

THE COURT: What else do you say you can't do?

MR. EPSTEIN: It was just about all of these items, your Honor. Again, you will see that they require certain decisions to be made which any member of the union can say to whichever governing body it is that makes the decision, "You can't do it." Questions as to whether these new positions are supposed to also now sit on the executive body of the Offshore Division, in addition to those officers who now are there; whether they will now, on the International level, assume positions there as distinguished from the vice-presidents who now sit in these positions.

MR. YOUNG: Your Honor, to expedite matters, I think it is very easy, what we will do is, if you would, go through the questions that are asked, and then you will be able to see exactly why decisions have to be reached on each one very quickly.

THE COURT: I was trying to do that.

MR. YOUNG: Yes. The second question, "Decision to be received not later than June 23, 1976, as to the titles of the Off-Shore Division officers who will represent the division on the General Executive Board."

There was a question that was raised during the pre-election conference: Who is going to sit on the General Executive Board? As it stands right now --

THE COURT: General Executive Board of the International?

MR. YOUNG: Of the International. As it stands right now, the vice-presidents of the Offshore Division -- there are three of them -- sit on the International's General Executive Board. The union properly said, "Well, if you are going to force us to have three top officers of the Offshore Division, should they sit on the General Executive Board or not? Since they are the top officers,maybe they should sit on. All we have said is: that is not for us to tell you. Do what you want. As of the moment, your own charters, your own constitution and bylaws, insist that the vice-president stay on there. But if you want to put those three top officers on the General Executive Board, make a decision. And we have to know that decision now so that we can advise the membership of what the positions are these people are going to hold. We have to tell the people who might want to run for those offices.

THE COURT: What is the next one?

MR. EPSTEIN: May I just be heard on that question, your Honor?

THE COURT: Yes.

MR. EPSTEIN: Here is what the union is faced with. There are three new officers who are nonpaid officers. Are you going to give them now the seats on the General Executive Board as distinguished from the three vice-presidents who are elected by the Offshore Division and who were elected for a salary? It is just such a chaotic condition that it just throws the union into an absolute mess. Because how can the board, or how can the membership, or who is going to in its wisdom, other than the membership, decide which should be done? Are you now going to put three more people on the Offshore Division Executive Council, now raising it to -- well, no, I guess you would just take off the International officers. I assume that is what Mr. Young would do?

MR. YOUNG: No, we are not suggesting how they form their own union in that respect. The International officers by virtue of the constitution, the International constitution -- all I am saying is that this Court should direct the union to authorize the General Executive Board to make those decisions. What he is worried about is suits from other members to say, "My God, the GEB never had that authority." All we are saying,for purposes of this election, to effectuate your order some entity in the union has to make those decisions as to what the duties of those top officers are going to be, whether they are going to hold a special nominating convention and such as that. They want some protective device, such as a court order, that says, "Well, the General Executive Board could have that authority," or maybe it should reside in the three top officers, or whatever it happens to be. I think he is doing an admirable job in trying to explain, "Oh, we want union democracy and representation," but you have got to effectuate this order of yours, your Honor, and some order should be entered. Otherwise you end up with a de facto stay of your order by virtue of a lengthy referendum procedure and more procedures and more procedures. So we have no objection. In fact, we would welcome some order. Maybe it is helpful to the union to have some order that says the General Executive Board by virtue of the authority I have recited in our papers from their constitution seems to have the authority to act. That is what we are saying. It is up to them whom they want to act, but somebody has to act, and we think the GEB happens to have that authority.

MR. EPSTEIN: Your Honor, I would like to ask Mr. Young, then: What then happens the next go-round? Does the membership then ratify what was done by these officials, or is it necessary to have a new constitution created to define these things? You are thrusting the union into a period of absolute bedlam.

THE COURT: The union executive body here would simply be following the Secretary's directions with respect to a new election, would they not?

MR. YOUNG: In our opinion, yes, your Honor.

MR. EPSTEIN: I can't quite understand, though, if their directions are "Do as thou wilt," I can see where there is a horrendous problem as to how something is going to be done subject to membership approval. There are so many gaps, there are so many lacunae in this matter.

THE COURT: Let us take the next one.

MR. YOUNG: Yes, let us take a very simple question here. All right, that is a relatively simple decision. There is a question as to -- well, the Offshore Division seems to have the authority to close down certain ports and to do a few other things, if economic necessity dictates or -- I don't remember what the other qualifying clause is. But that is a good example of the need to have somebody make a decision to tell us which ports they are going to close, which will have the effect of canceling out certain officer positions. We have to know now which officer positions there are going to be elections for. And so we are insisting that somebody make a decision.

It happens here that the Executive Council of the Offshore Division can make that decision, and Mr. Epstein points out that they are about to make that decision.

THE COURT: Which number is that?

MR. EPSTEIN: I have no quarrel with this one, your Honor.

MR. YOUNG: No. 3 on page 10.

MR. EPSTEIN: The point being that this item specifically is given to the Offshore Division Executive Council for them to rule on, as distinguished from these other items, which are not within the province of that board. I have indicated in my papers that this body is examining exactly right now the issue of which ports may be reclassified in the upcoming election that has been ordered by the Court.

THE COURT: So you don't object to 3, then; is that it, since that decision is being made, you say?

MR. EPSTEIN: That is correct.

THE COURT: Then let us go on to 4.

MR. YOUNG: All right.

THE COURT: You objected to 1 and 2, is that it?

MR. EPSTEIN: With the several additional items that I have mentioned, aside from the ability to do this, which we feel does not by virtue --

THE COURT: Let us look at this constitutional provision again.

MR. YOUNG: Your Honor, what we had suggested there, in the order part, I think you are looking at page 1, those provisions, what we had suggested is that this Court should order that the union, by its General Executive Board, International Subcommittee or Offshore Division Executive Council, whichever one the GEB determines is the appropriate entity to make the particular decision in question, should be ordered to make the decision.

THE COURT: Yes. I just want to really get the name correct. It is the General Executive Board that you contend has the power to make these decisions, is that it?

MR. YOUNG: Yes, ma'am.

THE COURT: Under the constitution as indicated.

MR. YOUNG: And as to the Offshore Division, certain powers may reside in the Offshore Division's Executive Council.

THE COURT: Such as?

MR. YOUNG: Such as this one, this closing down certain ports. And the GEB, since you might want to have some entity, the GEB can certainly allow that Executive Council to act, or you can just say where the Executive Council has the authority to act it shall act.

THE COURT: All right. Let us go on to 4, then.

MR. YOUNG: "Decision to be received by this order not later than June 23, 1976, as to any delegate positions to be filled in 1976 supervised election."

This may be too prompt. The union queried the Secretary during the prenomination pre-election conference as to whether it would be permissible to simultaneously conduct an election for convention delegates, and we said, "That is all right, you can go ahead and conduct your election for convention delegates if you wish, but then we have no authority and will not supervise that election."

For the purpose of insuring that there is some appropriate notice and ballots and all the mechanics of election, we should say, "If you want to conduct it simultaneously, make a decision, tell us you are or you are not going to conduct your convention delegate election at the same time."

THE COURT: All right. Again you say the General Executive Board under the constitution has that power, is that it, to make the decision?

MR. YOUNG: I assume that the words that say that the GEB has authority to supervise the activities, affairs and functioning organization are pretty inclusive.

THE COURT: I am just asking you what your position is.

MR. EPSTEIN: If your Honor please, may I give a little background on delegate's position?

THE COURT: Yes.

MR. EPSTEIN: The delegates were elected in 1974 for a three-year term of office. The delegate election was not in any fashion the subject of the lawsuit in 1971 or in 1974. The constitution provides that election of delegates shall be held simultaneously with the election of officers. These delegates have not been tainted whatsoever. At the present time they have the right to serve until 1977. Mr. Young is suggesting that he can by fiat now say that we are lopping off a year's right that you have to remain a delegate.

THE COURT: Well, he is not. He is only asking you to let him know whether that is going to be held simultaneously with this election. Is that it?

MR. YOUNG: That is correct, your Honor.

MR. EPSTEIN: Who is going to let him know? That is the point.

THE COURT: The General Executive Board. I just asked him that, what his position was, and the constitution does seem to empower that board to act on these matters. There is no other body that can act with respect to these situations.

MR. EPSTEIN: But, if your Honor please, the document says that the General Executive Board -- the part which

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Mr. Young did not read on -- nor otherwise prohibited by the IOMM&P constitution or restricted by membership referendum. And these are exactly those items that constitute a change in the constitution or bylaws that can only be done by membership referendum.

MR. YOUNG: But that on its face is very clear. If they are restricted, then they are not going to hold an election.

THE COURT: That is right. I don't know what this is all about.

All right, let us take the next one.

MR. YOUNG: No. 5 concerns the decision as to whether or not a special convention for the purpose of nominations will be held.

THE COURT: For this election?

MR. Y[illegible]: Yes. The union is empowered to call a special convention on a variety of matters, I assume, but certainly as to nominations. And there International officers can be nominated -- in fact, the way International officers are nominated is either by action of a convention or by a petition. They had indicated that they were going to hold or they might hold a special nominating convention.

THE COURT: All right. I understand that one. You want to be heard on that?

MR. EPSTEIN: Yes. We have no problem with that, your Honor.

THE COURT: What is the next?

MR. YOUNG: The method of selecting an International Ballot Committee if any must be communicated. One of the functions normally of the nominating convention is to select from among its delegates there an International Ballot Committee which supervises the election.

THE COURT: Is there any problem with that, Mr. Epstein?

MR. EPSTEIN: If we have the convention held, at that convention there can be an election of the International Ballot Committee.

MR. YOUNG: That seems reasonable. We are just concerned that if they were not going to hold a convention they advise us whether they are going to figure out some way to have an International Ballot Committee. Now they indicate they will. I assume on the record it is indicated that there will be a special nominating convention. Is that correct?

MR. EPSTEIN: In the papers which we submitted we di indicate to the Court that a tentative schedule has been made to hold an International convention.

THE COURT: All right, you will, and then you will have the committee selected then, is that it?

MR. EPSTEIN: Commencing August 17, at which time nominations for the International --

THE COURT: Let us take 7, then.

MR. YOUNG: 7 concerns the use or nonuse of an outside independent balloting agency. Your Honor may recall that the 1971 and the 1974 elections were conducted by the American Arbitration Association, an outside independent balloting agency pursuant to a requirement of the union's constitution. We have no objection if the union wants to do away with that requirement, to save costs. In fact, as long as the union employees or members do the actual work that is entailed -- putting the ballots together and checking all the data and so forth and so on -- subject to the Secretary's supervision, we are delighted to accommodate the union. All we are asking for, again, is the decision.

I would like to note specifically, your Honor -- I had a chance to glance at at least one of these provisions in defendant's responsive papers, and it indicates essentially no objection, but I must say that the manner in which this is worded strikes me as a bit peculiar, to say the least. I just want to make it clear the Secretary does not perform the actual mechanical chores. It could never do that for the ten or twelve elections it is now supervising. Somebody in the union, if they want to do away with this outside balloting agency, that somebody in the union, the members or their employees, must perform the chores. But we need a decision as to whether they are going to have an outside balloting agency or not.

THE COURT: What is the problem?

MR. EPSTEIN: Again, your Honor, we are back to Square 1 as to who is to make that decision. The union has indicated in its answering papers that we would wish to be able to conduct this without the American Arbitration Association for the purpose of saving what in the last time had been an astronomical amount in connection with the election. And in view of the Secretary's supervisory role, we felt that that should be able to comply with the requirements of the constitution, speaking about an impartial balloting agency being the one.

THE COURT: He just wants you to make the decision. Is that it?

MR. YOUNG: Yes, your Honor.

THE COURT: Whether you are going to have it or not.

MR. EPSTEIN: Can you tell us who the "he" is, again?

THE COURT: The General Executive Board. That is their general consistent position: that if the Offshore

Division specifically has the power with respect to any of these items, they would make the decision; otherwise under the constitution it falls to the General Executive Board.

MR. EPSTEIN: Your Honor, again, as my papers indicated, we would want a direction from your Honor saying that you order the General Executive Board to --

THE COURT: I think that is why we are here.

MR. EPSTEIN: -- to decide this issue.

All right, I just wanted to be sure.

THE COURT: 8?

MR. YOUNG: No. 8. Before we conclude on 8, there will be two others I believe that we have briefed in our other papers. But 8 concerns the question of which members are entitled to run for office in the Offshore Division. Pursuant to the provisions in their bylaws, it has certain criteria that must be met before a member can run for office. I think it has to be a member for four years, and I don't recall -- whatever it is. The Secretary ruled that those criteria for running for office were acceptable in this union, for this union at this time. However, we did it on the representation that no more than 2 percent of the whole membership would be excluded from running for office. There is a separate legal requirement that criteria have to be reasonable, and one of the tests of reasonableness is how many of the people are excluded from running for office under the criteria.

Based on the representation, we said OK, you can have those criteria. But we wanted supporting data, we wanted to make sure the representation was accurate. And therefore we asked they submit, I guess, the number of union members who presently qualify for union office as well as the total number of all members, just to verify their representation.

MR. EPSTEIN: I gave to Mr. Gumpertz earlier today a list that had been prepared by the controller of the organization showing those members who have transferred into the Offshore Division since 1970. Mr. Lowen, who is the secretary-treasurer, is out of town until next week. He could send a letter verifying the statistics with respect to the percentage that would be eligible to run in this office under the criteria set forth in the Offshore Division bylaws, which is completely permissible within prior cases and guidelin of the Department of Labor. So there is no problem there.

MR. YOUNG: If the data is submitted, we will check it. I was not aware the data was submitted.

THE COURT: Then there is no objection to 8. Let us view it that way. Is that correct?

MR. EPSTEIN: Yes.

MR. YOUNG: Except, your Honor, we have summarized those decisions. There were certain other rulings that were made by the Secretary which are embodied in this letter.

THE COURT: Let me take care of what we have here first. As to 1, 2, 4, 5, 6 and 7. Is that it?

MR. YOUNG: Yes, I believe so.

THE COURT: As to 3, there was no objection, as I understood it, that they were in the process of doing that?

MR. EPSTEIN: Yes, your Honor. The only question would be the timing with respect to that.

MR. YOUNG: Your Honor, in view of the necessity for the order to show cause, obviously the whole process contemplated is now delayed. We would be willing to allow the Executive Council to make its decision -- I gather they are meeting on the 8th and the 9th, or the 7th and the 8th of July, and to have their decisions made by the next day, submitted to us by the next day.

THE COURT: That would be July 9?

MR. YOUNG: I don't know if that is a weekend day, but the following business day.

MR. EPSTEIN: July 9 is a Friday.

THE COURT: When will the meeting be over?

MR. EPSTEIN: I assume that by Friday we will have a word that we can give to the Department.

THE COURT: Then as to 1, 2, 4, 5, 6 and 7, the General Executive Board is directed to make decisions as indicated with respect to those matters by July 9. Is there anything else?

MR. EPSTEIN: Your Honor, the General Executive Board is a different body. That is the constitutional, the International body. This is the Offshore Division Executive Council.

THE COURT: Is that the body?

MR. YOUNG: Your Honor essentially is correct. The General Executive Board should make the decisions with respect to 1, 2, 4, 5, 6 and 7 by a date certain.

THE COURT: Yes.

MR. YOUNG: What they have been arguing for is that the Offshore Division Executive Council is going to make the decision with respect to No. 3, I believe.

THE COURT: 3, and then you have data to submit as to 8.

MR. YOUNG: That is right. And what we would suggest is that all decisions, all decisions be in by July 9, whether they are made by the General Executive Board in these you just itemized --

THE COURT: All right. You can set this all forth in a written order. I thought there was no objection as to

3 and it was being done.

MR. YOUNG: It is, but there is no date certain as to when.

THE COURT: That is July 9 also. And this data is to be submitted by that date also. That is in 8.

MR. YOUNG: Just looking over our exhibit again, as I mentioned, there are certain other rulings of the Secretary embodied in the June 15 letter that may have been put in issue by the union's responsive letter of June 22. And we tried to deal with most of them in the exhibits.

THE COURT: What exhibit number is that?

MR. YOUNG: E, No. 6.

THE COURT: Exhibit E, 6?

MR. YOUNG: Yes, your Honor, page 4.

This issue is the question of whether members are entitled to run for more than one office. As I mentioned before in discussing this scheme that you have ruled to be illegal, we have no objection if one member wants to run for two separate offices, as well as there are two separate elections for them.

THE COURT: I see. And the union says what as to that?

MR. EPSTEIN: The union says we don't know, your Honor; we just want the Court to give us an order saying we yes or no.

THE COURT: The ruling which I made says in effect that there must be a separate election for that.

MR. EPSTEIN: No, but the question of somebody running concurrently for two separate offices.

THE COURT: The government says it is not objecting.

MR. YOUNG: I have to add one more sentence, your honor. While we do not object to one member running for two offices --

THE COURT: That is, in the International and in the Offshore Division.

MR. YOUNG: That is right. As long as the charters of both of those organizations allow it. In other words, again it has to be lawful, or the election has to be conducted consistent with the constitution and bylaws, as the law says, insofar as they are lawful and practicable. So this is one where we can't make a judgment as to whether or not the union wants to allow its members to run for the two offices, but if they do we don't object.

The problem here is that there are two provisions, one contained in the International constitution and one contained in the Offshore Division bylaws, that may throw a question to the union itself as to whether they want to permit their people, their members, to run for both offices, let us we say Offshore Division and International at the same time. We want them to interpret their constitution. If they say, "Go ahead, it's OK to run for two offices" --

THE COURT: That is another decision you want made by the General Executive Board?

MR. YOUNG: Yes, your Honor.

MR. EPSTEIN: If your Honor please, again are we going to be assured, is the organization going to be assured, that whichever way the General Executive Board rules, somebody arguing, a union member arguing against that would then not be able to lodge a complaint with the Secretary of Labor saying that there was something wrong in the election because they did it A instead of non-A?

THE COURT: We certainly cannot enjoin anybody from bringing a lawsuit, if that is what you are suggesting, or filing a complaint with the Secretary of Labor.

MR. EPSTEIN: Your Honor, that is exactly what I am trying to do by having the Court rule that --

THE COURT: I don't know how you avoid people filing lawsuits or filing complaints. You want to issue a general injunction enjoining people from filing --

MR. EPSTEIN: No, but what I am saying is that if you are ordering the General Executive Board to do certain things that in so doing they are going to be given some sort of immunity from prosecution later, if a member says who told you to do it and why did you do it this way rather than that way, we would like the government to ask for an order saying that it is permissible for the organization to permit an individual to run for this and that.

THE COURT: I thought he just said that. They would have no objection?

MR. YOUNG: Your Honor, in fairness to the union, they do raise an interesting question. The question is: If they interpret their constitution one way, will we later say that, "Uh uh, your interpretation was wrong and file an action against them."

I am advised by Mr. Gumpertz that we would have no objection if they interpret these two provisions allowing somebody to run for two offices. However, you have got to be very careful, because the Offshore Division provision says, "No member may be a candidate for more than one paid elective office in one election." If they figure out some way that one member runs for two offices and waives his pay in one, for instance, that is sufficient. But if they actually hold two paid offices, then it is direct contravention of their own provision.

What we are saying is, "Go ahead and interpret it, but make sure you are consistent with at least the words of the two provisions."

MR. EPSTEIN: He is not really helping us out when he is saying, "Make sure." I want him to say that when we do thus and make decisions, he is giving us the imprimatur or the Court is saying, "You are right."

THE COURT: No, the only thing he is telling you is that the Secretary cannot challenge that.

MR. YOUNG: It depends on the words of their decision.

THE COURT: I gather, according to the government, if you say that a person is eligible to run for two offices as long as he does not receive pay for both, or he may run for a paid position and a nonpaid position, that the government would not find objectionable, as long as it does not violate the specific terms of the Offshore Division constitution, which says that you cannot have two paid offices. Is that it?

MR. YOUNG: Yes, your Honor. Just to further the understanding, though: They will present, I assume, the union, whoever rules in the union, the GEB will present some decision to the supervisor. The supervisor will look at it before he says OK, this is satisfactory.

THE COURT: Yes, this is a decision to be made again by the General Executive Board and submitted to you.

MR. YOUNG: And then we will examine it before signing off on it.

THE COURT: Yes.

MR. EPSTEIN: And it is contemplated again that this is going to be that the General Executive Board is ordere by this Court to rule so-and-so.

THE COURT: Yes. Next?

MR. EPSTEIN: If your Honor please, there is another provision which was not spoken to in the government's papers, which we raised in our answering papers, and that is concerning a period of time for Offshore Division nominations. As it now stands, the Offshore Division bylaws provide that such nominations shall take place in the month of June. Obviously, that cannot be done. Again we would want some direction from the Court or from the Department to be incorporated into the Court as to --

THE COURT: What does the Secretary say as to that?

MR. YOUNG: Your Honor, we have addressed ourselves to that in No. 8, last paragraph. The full question was whether or not nominations for Offshore Division office could be had at the special nominating convention. We ruled that they could not; that the Offshore Division provisions did not allow for that; that they allowed for petition nomination during the month of June. We said, "All right, they have to nominate their officers by petition, with a proper adjustment for timing, and we will decide that timing." That is one of the Secretary's decisions in context with everything else that has to be decided at an appropriate time. I mean, I can't tell you right now what is appropriate or how long it is supposed to take or just how well it fits into the revised schedule, depending on today's activities, as to what the time will be. But there will be an appropriate time and I assume there will be at least a month, since that is what is contemplated in their own Offshore Division bylaws.

THE COURT: At least a month from when?

MR. YOUNG: Once the whole program, the processes are figured out, so that once decisions are reached by --

THE COURT: I see what you mean. All right.

MR. YOUNG: -- we will then advise them when it should take place.

MR. EPSTEIN: And this will be incorporated, then, in an order that will be from this Court, so that there will be no necessity of action by --

THE COURT: Yes, subsequently, but we need one immediately with respect to the decisions made today. Let us go on. What is the next one?

MR. YOUNG: No. 12, your Honor, concerns the percentage vote needed to be elected.

THE COURT: What about it?

MR. YOUNG: Well, following the International constitution we agreed that to be elected for International office the victor must have a 40 percent plurality. No problem with that. The question is, what is the percentage of the vote necessary for Offshore Division offices? And while we had indicated that it should be a majority vote needed to elect these officers, we have slightly modified our position in view of the fact that we thought that one of the provisions was all inclusive. In fact, the Offshore Division bylaws requires that the Offshore Division vice-presidents be elected by a majority vote. It does not say anything with respect to all those other offices. Whatever the union wants to do with respect to those other offices, insofar as it is a plurality or majority, that is up to the union, since their bylaws do not speak to that point. But we must follow the bylaws insofar as the majority vote requirement for the vice-presidents. And that is all we are saying.

MR. EPSTEIN: If I may be heard on that, your Honor: The section that Mr. Young cited with respect to the 50 percent has since been amended by membership referendum of the Offshore Division, wherein the positions of vice-president as separately elected positions have been eliminated, and instead the three port officials, that is, the Port Agent-New

York, the Port Agent-Galveston, and the Port Agent-San Francisco, by dint of such election to that position, would also be the three vice-presidents.

I have affixed to my moving papers, or my answering papers, as Exhibit A a copy of Proposition No. 5, which was passed by the membership in January of 1974, wherein the bylaws were amended to provide that the three elected vice-presidents shall not be in addition to the elected port agents. And it goes on further to describe what will happen, the designation of these jobs by dint of their having these other port offices to which they are elected. This was done in 1974, in the 1974 election, and the question was raised at that time, during the course of the election, as to whether or not it is a 40 percent, it is a plurality, exactly what it is. And the arbitrator appointed by the American Arbitration Association ruled that for the Offshore Division positions a simple plurality is all that is necessary. This 50 percent majority has disappeared by reason of the amendments that were made to the bylaws in 1974.

That is the interpretation that the union has given it. That is the interpretation that the arbitrator --

THE COURT: So that as to these Offshore Division officers, you are saying, a simple plurality will be the rule.

MR. EISTEIN: Yes, your Honor.

THE COURT: What does the government say?

MR. YOUNG: The government says that that is all right, except insofar as the vice-presidents of the Offshore Division may be concerned. What we base our concern on essentially is a provision of the constitution which has not been modified by the very proposition which Mr. Epstein read. If I may read to you just Article XIX, Subsection 2, Subsection 1, the last sentence, which says: "For all elective terms of office subsequent to the transitional term (January 1, 1975)" -- in other words, as of now -- "Offshore Division vice-presidents shall be elected in regular election by a majority vote of the membership of the Offshore Division."

The fact is that they have another scheme that allows three particular port officers to automatically become the vice-presidents as well, which somehow does not obviate the fact that this provision specifically talks to the question of vice-presidents being elected by majority vote."

MR. EPSTEIN: If your Honor please --

MR. YOUNG: I am not particularly concerned one way or the other, except for the fact that this is a constitution provision, a bylaw provision, which the Secretary believes must be enforced during the course of this supervised election. It is as simple as that.

THE COURT: In other words, that these officers who are now going to be elected, other than the three top officers, must be elected by a majority; is that it?

MR. YOUNG: Just the vice-presidents.

THE COURT: Oh, just the vice-presidents.

MR. YOUNG: All the rest of the offices it can be by plurality vote. But because of this provision, the Secretary felt that, well, no matter what this modification was, which said specifically the three elected vice-presidents shall not be in addition to the elected port agents, that means the port agent from New York, for example, automatically becomes the Atlantic vice-president, does not quite undo the impact of the constitutional provision which talks to majority vote.

THE COURT: Why should the vice-presidents be elected by a majority?

MR. YOUNG: As far as the Secretary is concerned, we really don't care. It is just that because we have an obligation to all the members to enforce the terms of the bylaw provisions and the constitution, insofar as they are lawful, w: have to follow up our obligation; otherwise other members will come back to haunt us as well as everybody else, and the Court. They will come right into court and scream and yell that they are not adhering to the lawful provisions of the constitution.

THE COURT: So it is our contention that the constitution would presently require a majority vote for the vice-presidents, for other officers, plurality; is that it?

MR. YOUNG: That is right.

THE COURT: All right.

MR. EPSTEIN: If your Honor please, when he is referring to the constitution, I believe he means the Offshore Division bylaws.

MR. YOUNG: I do.

MR. EPSTEIN: And, as I said, those specifically were amended to eliminate exactly that position of a separately elected vice-president.

THE COURT: By this provision which you have just pointed to?

MR. EPSTEIN: Yes, your Honor. That was the intent of it, and in fact that is how it has been carried out and understood by this organization and for -- you know, you have here now a situation where the government says it does not care less, but this is its interpretation of our bylaws, when we have interpreted otherwise that the intent of this change was to withdraw the separately elected officers and consequently withdraw them from the necessity of being elected by a 50 percent majority. So that now --

MR. YOUNG: But --

MR. EPSTEIN: May I just finish, Mr. Young? So that now all of the Offshore Division positions are to be elected only by the simple plurality. These vice-presidents no longer are separate and apart for the necessity of a 50 percent vote. We specifically changed for that reason.

And under the government's view, to go backwards to the 50 percent, you are almost inviting a runoff in this position. That was another reason why it was changed in this fashion. 50 percent is a tremendous burden --

THE COURT: Will you point to the language which changes that? I am looking at your exhibit.

MR. EPSTEIN: That is the interpretation. If the language is a little defective, I must say that perhaps you can't write exactly in every case what it is that you mean, but this was the intention, this is what was done in 1974 when the issue was raised at the American Arbitration Association as to what does carry. It was fully argued by proponents of both sides and the arbitrator, and I have submitted that as an exhibit also, your Honor, following this, Exhibit B, the arbitrator, Burton Turkus, who was appointed by the American Arbitration Association after a lengthy discussion of the issue, did rule that all that is required under the bylaws as amended was a simple plurality.

To wind back something that the union took pains to change, (a) I think is wrong in that the government has the wrong view, and (b) you are creating a holocaust for us, in that you are going to create a runoff in this position. If you have five people running, three people running, you are not going to get anyone getting 50 percent.

In the last election, there was a difference of six votes, and the 50 percent would never have passed that.

THE COURT: Let me see whether I understand when this arbitrator's decision was rendered. You say at the time that this provision was amended?

MR. EPSTEIN: It was after the amendment. The amendment was done in January.

THE COURT: And that is Proposition No. 5?

MR. EPSTEIN: Yes. In January of 1974 is when the bylaws were changed by this proposition. The issue on the election, as you can see from the covering letter was, or one of the title pages, was December 30, 1974. So the change was made in January, the election issue came up in December of that year, and it was ruled by the arbitrator that a simple plurality will carry for all Offshore Division offices.

THE COURT: What do you say to that, Mr. Young?

MR. YOUNG: Your Honor, the arbitrator's ruling,

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as I recall it, does not deal at all with the vice-president question. It just does not. It does not say anything about --

MR. EPSTEIN: But the results were certified by the American Arbitration Association that one of the vice-presidents who won by six votes and did not have a 50 percent was declared to be the winner. It is implicit in the arbitrator's ruling and in the ultimate certification by the American Arbitration Association.

MR. YOUNG: Excuse me, your Honor, my colleague is pointing something out.

MR. EPSTEIN: You know, we can argue here the same thing that was argued before, with the government being the minority of one, feeling that it interprets it one way. But there is no one who to my knowledge wants to have it the 50 percent. You are just putting a tremendous burden upon the union, creating a runoff; no question about that.

MR. YOUNG: Your Honor, we are in a somewhat ambivalent position here. We don't want to object just for the sake of objecting, but this is the interpretation now given to us by the union incumbents. I don't know what the other interested persons might feel about how this should or should not be interpreted. I don't know if the arbitrator absolutely interpreted that correctly or not.

What I might suggest as a way of solving this at the moment is that the Court order that this provision be obeyed, subject to modification by the Secretary if the Secretary is convinced, based on any real hard evidence that can be presented, that that is how it has been interpreted by some outside source.

Frankly, if you read that provision there, the arbitrator's decision, it does not direct itself at all to the vice-president question. It talks about the three International officers and rules that the 40 percent provision will apply. And I have not had time to read this whole thing, but I don't see this provision.

THE COURT: Why don't we let this be in abeyance until you can examine it further, and we can hear it again, if this is your last point. I have other matters waiting.

MR. YOUNG: There is one last point, to be as candid as possible. It is No. 5.

THE COURT: No. 5 is what?

MR. YOUNG: It relates to campaigning in the union halls.

THE COURT: Are we looking at E still?

MR. YOUNG: We are still looking at E. It has to do with No. 9.

The Secretary is very, very concerned that in addition to supervising the initial stages of this election, that it have the ability to supervise the ongoing election in terms of the campaign procedures and campaigning and the electioneering. Accordingly, the Secretary has ruled that there shall be no campaigning in union halls, among other things. It makes it very obvious that the incumbents who were sitting in union halls, who are not out at sea, should --

THE COURT: I will hear from the union on that. You have made that ruling.

MR. YOUNG: We have made the ruling and we have slightly modified it, so you completely understand. We are very, very concerned that all candidates have equal opportunit to present their views. If in fact union halls, which should not be used in election as a campaign tool of any one party, pursuant to 401(g) of the law, no moneys are supposed to be spent on the campaign -- in this case if there is to be any campaign at all, it has to be absolutely equal for every candidate. And unless the union presents some plan that assures us that it will be absolutely equal, they should not have any campaigning in the union hall at all.

MR. EPSTEIN: I am astounded by that comment. I don't see how you can reconcile the government's view that you can't campaign in a union hall with the Title I rights that every member has to speak on any issue and to talk to his fellow union members on anything involving the union. Is he saying that --

THE COURT: He is saying you can do that, as long as everyone has equal access to the union hall.

MR. EPSTEIN: Everybody has. Any member of the union has the right to go into any union hall and speak to people, say what he wants. They are members of either the Offshore Division and they have membership in the one division. We have a number of ports all over the country. They can go in, they can say anything that they want. If he is saying that this is using the hall for campaign purposes, I cannot believe that that is what the law provides. If he is saying that the union hall cannot publish a flyer in favor of one candidate or something like that, fine, there is no problem there. But the use of the union hall is such a vague term, I can't believe that it is what Mr. Young says it is. And I don't see in 481(g) what he is complaining about. He is talking about union funds being used. The hall is there, the hall is open for membership activity, for a free discussion, views, of issues that are before the membership. The hall is paid for, of course, but the members have a right to speak in the hall.

THE COURT: I gather he means that if the incumbents have a meeting there at which they speak regarding their own candidacy, that at that same meeting everybody running for office should have equal access to that particular platform.

MR. EPSTEIN: They always do, they always do. There is no restrictions. For us to create some sort of guidelines now, I can't understand, other than everybody comes in and says what he wants to say. I don't see how guidelines can be formulated.

THE COURT: Let Mr. Young reply.

MR. YOUNG: Your Honor, I think you have the essence of what we are concerned about. The policing problem would be enormous. If you keep in mind there are ports all around the country, and everybody in the whole Offshore Division, for example, has the right to run for any office in the Offshore Division, if you are going to start providing equal opportunity here, there, and the next place, you are going to allow something to happen in one place or something is in fact going to happen in another port, the Secretary can never be assured that all candidates have the right for an equal opportunity to campaign.

Accordingly, we submit that the campaigning has to be severely restricted when they are using union halls which are supported by union funds. As your Honor just articulated the guts of it, when they are going to have some concerted effort, some concerted campaigning, it has to be submitted to the Secretary for his approval first, without absolutely restricting people. And we have no intention of restricting Title I rights, they are called, of members. If some member happens to walk in and says, "I am for Joe Blow in this election," that is all right.

THE COURT: You are speaking of organized activity?

MR. YOUNG: Basically, organized or organized by some subterfuge. You know, if you have fifteen or twenty members suddenly walking around the various halls saying, "I am for Joe Blow" and it rings as some organized effort, that took would be improper and the union syould be cautioned against that type of thing. But we spelled out very clearly in this comment here, No. 9, what --

THE COURT: I don't see 9. What page is that on?

MR. YOUNG: The page is not marked here, but it is page 5.

THE COURT: Of what?

MR. YOUNG: Of our Exhibit E, under campaign procedures.

THE COURT: The essence of this, then, is that any use of the union hall with respect to the campaigning of individuals for office would be the subject of prior review by the Secretary?

MR. YOUNG: That is correct, your Honor.

MR. EPSTEIN: I still am baffled by what that means, your Honor. Suppose a candidate is on a ship and he is pulling into the Port of Mobile. Are you saying that he can't go into the office in Mobile and say, "Hey, here I am, I am Harry Jones and I am running for Port Agent-New York, and I got to run back to the ship in a little while, so I thought I would be here tomorrow, or I thought I'd be here yesterday, but the ship changed, and consequently I am here today ." Is he saying that that would be impermissible, that you would somehow have to give notice to everybody that the ship may come in?

THE COURT: No. I think he expressly excepts that.

MR. EPSTEIN: I am not sure. I am really not sure if he is saying that. I don't think Mr. Young realizes that is a maritime union.

THE COURT: It says here, in the comment: "It should be made clear, however, that the Secretary has no intention of depriving members of their Title I rights."

MR. EPSTEIN: But he has not defined what he feels is not a Title I right.

THE COURT: The only way to define this situation is by giving an example, as the Secretary has, and as I did a moment ago, that is, that the incumbents cannot use the union hall for the purpose of having a campaign meeting to promote their own candidacy. If there is any such meeting, it would have to be a meeting at which all candidates have an opportunity to speak, since it is the use of the union's hall and the union's money which maintains that hall.

MR. EPSTEIN: Does that mean, your Honor, that if a candidate, and say not an incumbent, decides that I am going to be in Mobile on Tuesday, that is when I get in, he is going to have to write to every other candidate and say, "I expect to be in Mobile on Tuesday and I am going to go into the hall and try to campaign, and everybody else has an opportunity to do it." I mean, it is a paralysis that the government is contemplating.

MR. YOUNG: That is precisely why initially we thought it best to have absolutely no campaigning in the union halls whatsoever, because --

MR. EPSTEIN: But how else will the membership get to meet who the candidates are? I don't understand that.

MR. YOUNG: Just as the union has always permitted, there is campaign literature that is sent out, paid for by the candidates themselves and not the union. It is not the union funds that would be used for campaigning purposes. This Court as a matter of fact during the course of the NMU case, during supervision, in fact there was an order, not entered by the Court but by the Secretary, who said there will be no campaigning whatsoever in union halls. And that was upheld. It was not objected to by the union. Likewise, we are not objecting to people going into union halls and casually saying, "I am here; you know, I am running for office

THE COURT: You are speaking only of a formalized meeting?

MR. YOUNG: A formalized meeting, not just a campaign meeting, but if there is a meeting at a particular port and a candidate who is running for office stands up and says, "The first thing on the agenda is that I am running for office and I ask for your support," I think that would be improper without the prior approval of the Secretary and the equal opportunity to some other side or the representative.

THE COURT: Yes, I understand.

MR. EPSTEIN: Your Honor, I don't understand how practically that can be done. It just can't be done. Mr. Young does not know what goes on in a union hall. People come in, and here I am today. Who is going to pay for this?

THE COURT: No, he is not on that at all. He is not on some man just casually walking in and talking to the man standing next to him. He is talking about a formalized meeting of some kind, either a regular meeting at which time the incumbents take advantage of that regular meeting to campaign, or a specially called meeting by the incumbents in which other candidates are not given a chance to speak at the same meeting. I don't know why that is so complicated. It seems plain to me.

MR. EPSTEIN: Maybe I did not understand it. There are general union meetings which take place once a month on a Wednesday, which have always been open to whatever business is before the body. If it is an election period, candidates show up or they don't show up, and everybody is available to come there. That has been the practice that I assume is --

THE COURT: Well, the Secretary wants to know.

MR. EPSTEIN: Everybody knows that those meetings are coming up on a Wednesday.

THE COURT: You are going to notify all the candidates then that they can speak at that meeting; is that it?

MR. EPSTEIN: But does that imply that they can't speak at any other time or that they can't show up in a hall?

THE COURT: Not in a formalized meeting.

MR. YOUNG: If there is equal opportunity, that would seem appropriate.

May I suggest, your Honor, that there is a lot of incidental questions that may arise now, tomorrow, the next day, but these are decisions that the Secretary will have to make at the time. I can't predict, I really don't know enough of how members come into the union halls in this particular union.

THE COURT: All right. You have indicated this was your last issue, and with respect to that, the Court's ruling is that at any formalized meeting, that is, a regular meeting or a special meeting of any kind, if there is to be any candidate speaking, all candidates must be notified in advance of that meeting so that they can also speak.

MR. YOUNG: Or their representatives.

THE COURT: Or their representatives. Candidate or his or her representatives.

MR. EPSTEIN: Your Honor, I have one issue that has not been addressed, and I would like to get the Court's view on this. Mr. Young has said that they wish to have in nomination three executive officers of the Offshore Division, and that the General Executive Board is going to be ordered to go through the details as to what their title will be, whatever. Does the General Executive Board have the authority, if it so decides, not to create additional offices to increase beyond the number that they now have, but rather to change or add a title to the three vice-presidents, let us say, that now are there, that the Port Agent-New York shall be, in addition to vice-president, also the chief executive officer of the union, and similarly the Gulf be not only the Galveston Port Agent but the Gulf vice-president and also this new officer. There are going to be problems with regard to duties, responsibilities, that --

THE COURT: We have been over this now and, as I understand it, the three top officers in the International automatically become the three top officers in the Offshore Division. But you have just said that cannot be done.

MR. EPSTEIN: Right.

THE COURT: Which means that those three top officers in the Offshore Division have to be separately filled.

MR. EPSTEIN: My question is: Can the General Executive Board, since that will be the order, that they will determine the parameters or the nuts and bolts of the titles, can they decide, "We don't want to increase the number of people on the Offshore Division Executive Council and, let us say, create another problem as to whether the now existing vice-presidents shall be on the General Executive Board or whether these new officers shall be on the General

Executive board?

THE COURT: Are these officers generally on the General Executive Board?

MR. EPSTEIN: Yes, the three vice-presidents presently are. And that is one of the issues that was raised.

THE COURT: In addition to the three top officers.

MR. EPSTEIN: In addition to the International officers, yes.

THE COURT: Who become the three top officers?

MR. EPSTEIN: But that can't be any longer. That is what Mr. Young is saying. That is the tainted part of our constitution, so he says that the three International officers cannot be the three executive officers of the Offshore Division.

THE COURT: That is right.

MR. EPSTEIN: My question is, then: We must now have separate election for persons designated as executive officer, second executive officer, and financial officer, let us say, of the Offshore Division.

THE COURT: Yes. And they have the same powers and duties, I gather, as the constitution of the Offshore Division provides.

MR. EPSTEIN: That is a problem, because the powers are set forth in both the constitution and the Offshore Division. That is not quite my question. But that is a good question, as we were told by the Department of Labor, Yes, that is a problem and we will have to work it out.

But the other question is: Must we have three additional people to constitute officers of the Offshore Division Executive Council or can we not add a title to the now existing three vice-presidents so that we can eliminate the question, then, of which of these three officers will sit on the General Executive Board?

THE COURT: The three officers are now sitting there, aren't they, the three top officers?

MR. EPSTEIN: We are talking about the Offshore Division.

THE COURT: Yes. The three top officers of the Offshore Division --

MR. EPSTEIN: But they are sitting there by reason of their being the three International officers.

THE COURT: I know that. I am saying that under the new policy of the new regime those offices are going to be filed by election, an independent election, independent of the International offices.

MR. EPSTEIN: Yes.

THE COURT: And then they proceed to the

International board.

MR. EPSTEIN: That was the issue. Because, as it now stands, for the Offshore Division Executive Council -- and let us forget about the three International officers and their going down to the Offshore Division -- but now from the Offshore Division Executive Council the three elected vice-presidents sit on the General Executive Board. Mr. Young says we must now elect three --

THE COURT: In addition to the three top officers?

MR. EPSTEIN: That is what I want to know. Must there be an addition, or why can't we say that the three vice-presidents --

THE COURT: Let us do it this way. How many persons from an Offshore Division are now on the International Executive Board?

MR. EPSTEIN: Three.

THE COURT: Three. I thought you were saying there were three.

MR. EPSTEIN: There are three. The question is, if we add three new bodies to the Offshore Division Executive Council, who now is going --

THE COURT: Those three new bodies will then go.

MR. EPSTEIN: That is a problem. Because then you are taking away the vice-president.

THE COURT: No, you are not. Otherwise you are diluting the office. You are taking away some of the powers of the office as now defined in the constitution, that those three offices go to the International, is that it?

MR. EPSTEIN: But you are similarly depriving the other officers, then, the vice-presidents who have the same right to be on the General Executive Board, who have the same prerogatives. So what you are doing is giving to these nonpaid officers the new creation, a position on the General Executive Board that you are stripping from the paid vice-presidents. My question is, can you not say the vice-presidents shall also be the three executive officers?

THE COURT: The three vice-presidents of what?

MR. EPSTEIN: Of the Offshore Division.

THE COURT: You just told me they were not on the executive board.

MR. EPSTEIN: They are.

MR. YOUNG: They are on the Executive Council.

MR. EPSTEIN: Yes, they are.

THE COURT: So you have six on the executive board?

MR. YOUNG: Your Honor, maybe I can straighten this whole thing out.

THE COURT: Just a minute. You then have six on the executive board?

MR. YOUNG: Your Honor, maybe I can straighten this whole thing out.

THE COURT: Just a minute. You then have six on the executive board of the Offshore Division?

MR. EPSTEIN: Only if you include the president, vice-president and secretary as stemming from the Offshore Division.

THE COURT: Yes, that is what I am saying.

MR. EPSTEIN: But under what has been determined by the Court, the president, vice-president, and secretary of the International will hold only those positions and will not automatically descend.

THE COURT: Yes.

MR. EPSTEIN: They remain on the executive board by reason of their International office.

THE COURT: Yes.

MR. EPSTEIN: At the present time the three vice-presidents of the Offshore Division similarly are now on the General Executive Board by constitutional fiat.

THE COURT: Yes.

MR. EPSTEIN: You now have said the three international officers cannot be considered the three executive officers. There must be separate people elected for that.

Can we say, "OK, the vice-president shall also be the chief executive officer; the second vice-president in the Gulf shall be the second officer; and the West Coast one shall be the third officer." You then avoid the necessity of figuring out who was actually going to be on the General Executive Board. You don't have to strip the vice-presidents of their right in favor of these new bodies. You can say they are all one and the same people, so long as they have the titles.

THE COURT: Let me ask you this: Does the constitution and bylaws of the Offshore Division provide that the three top officers plus the three vice-presidents shall be on the International Executive Board?

MR. EPSTEIN: Well, it is not quite put that way. The constitution provides that the three vice-presidents of the Offshore Division shall be on the General Executive Board. They are joined by the three International officers, also by constitution. Now we are creating a new title. It is silent as to what will happen on this new title.

If you allow three new people to be officers on the Offshore Division and you allow them also General Executive Board seats, you are now flooding the General Executive Board with six people from the Offshore Division rather than --

THE COURT: Now that we understand it, what does the government say?

MR. YOUNG: Your HOnor, it is presented in a very confused fashion, and as we explained to your Honor before, that a decision has to be made by the union as to which members sit on the General Executive Board. Essentially, please understand the following. It is on Exhibit E, on page 1. It specifically spells out who is on these different boards. On the General Executive board it happens that there are the three International officers and the three vice-presidents from the Offshore Division and other vice-presidents from the other divisions.

On the Offshore Division's Executive Board, you happen to have the three International officers as, in quotes, as far as I can see, they are the executive officers of the Offshore Division, and the three vice-presidents. Whether or not the union now wants to put the three top officers of the Offshore Division separately elected --

THE COURT: Is the decision for the General Executive Board?

MR. YOUNG: That is right.

THE COURT: All right.

MR. YOUNG: But we caution, then, that the vice-presidents of the Offshore Division by constitutional provision have an absolute right to sit on the General Executive Board, and I don't know if it would be lawful for the GEB now to wipe away their authority, to say the vice-presidents cannot sit on the General Executive Board. Do you follow me so far?

THE COURT: Yes.

MR. YOUNG: The second point is, they ask, on the Offshore Division Executive Council, speaking on that one alone, and in terms of duties, can we just replace the three top officers of the Offshore Division, now separately elected, with these three vice-presidents, so that we won't have three separate new officers, just these three vice-presidents who we concede should be elected? The answer to these very simply is that these three vice-presidents are regional representatives. There is one for the Atlantic, one for the Gulf, and one for the West Coast.

It may be that they could be elected. I can't say absolutely that that is an impermissible plan that they should come up with, but what we asked them to do originally, what we asked the union to do, was to submit some plan for us to insure that the three top officers, who have specific duties spelled out in the Offshore Division bylaws, are separately elected. Now at this moment, at this late hour, they come up with the plan. All we have been saying

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all along is that the plan we have was illegal. Your Honor declared that descension scheme illegal. "Now, Union, as to your Offshore Division, submit something to the Secretary and they will look at it. But unless you do, and unless it is legal, right now we are telling you, you are going to have the three top officers who are identified separately elected."

THE COURT: Then we will do it this way. They will submit a plan and we just have to rule on it when it comes up. Thank you, gentlemen.

MR. EPSTEIN: If your Honor please, I have one final comment. I asked you earlier that in the event that the Court of Appeals rules otherwise on the question of the three International officers, what would be the result of your ruling today, and you indicated it would be superseded by the Court of Appeals'.

The second question is, what if the Court of Appeals decides that the election should not be held this year but rather should be held next year?

THE COURT: That is also superseded.

MR. EPSTEIN: Will that supersede your rulings now on these particular issues involved with regard to the timing and the restructuring of these other --

THE COURT: The election would be off, wouldn't it?

MR. YOUNG: It would be suspended. The timing would be rearranged appropriately, depending upon what the Court of Appeals says.

MR. EPSTEIN: But would your ruling on the question of the three officers still remain in effect? Here is the problem. If that remains in effect, that may be considered, not a final -- what is the word I want?

MR. YOUNG: Interlocutory.

MR. EPSTEIN: -- interlocutory ruling, which then would not be subject to appeal until next year at the termination of the election.

THE COURT: What ruling?

MR. EPSTEIN: Your ruling saying that the system by which the three International officers --

THE COURT: First of all, Mr. Young is going to notify the Court of Appeals of the ruling. That is the first thing. If the Court of Appeals has a different view, that is the end of it, like any other.

MR. EPSTEIN: No, no, but suppose the Court of Appeals does not address itself to the ruling that you made about the illegality of the three top officers, but all they say is, the election of officers should be held next year. We now have your interlocutory ruling on the validity or invalidity of your schedule now, which says that the schedule is invalid, but it is an interlocutory ruling which presumably will not become final until next year, after the election is held and there is a certification, which would mean we would not be able to appeal --

THE COURT: What is your question?

MR. YOUNG: That is just inaccurate. Your Honor, if the Court of Appeals does not direct itself to the descension scheme, your Honor's order is effective, but there is no reason that it cannot be appealed if necessary after that. It is an injunction. I assume you are enjoined not to use that scheme. That is essentially what we will say in the order and as far as I know you can appeal from the injunction. If it is not, your Honor can certify the issue.

THE COURT: Certainly.

MR. EPSTEIN: Thank you.

MR. YOUNG: Thank you.

- - -

W,Jr.:n

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

W. J. USERY, Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

INTERNATIONAL ORGANIZATION OF
MASTERS, MATES AND PILOTS,
INTERNATIONAL MARITIME DIVISION,
ILA, AFL-CIO,

Defendant.

ORDER

72 Civ. [illegible] (CBM)

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JUDGE MOTLEY'S CHAMBERS

A judgment and order ("judgment") having been entered on April 15, 1976 declaring the 1971 election of the defendant Union's International officers and Offshore Division officers void; and said judgment having further ordered that a new election under the supervision of the Secretary of Labor be conducted for said officers in accordance with the provisions of Section 402(c) of the Labor Management Reporting and Disclosure Act (the "Act"), 29 U.S.C. § 482(c); and said judgment having further ordered that the new election be completed no later than December 31, 1976 (unless a run-off is necessary in which case the Secretary is authorized to extend the completion date); and the Court having retained jurisdiction over this matter until the new election has been certified in accordance with 29 U.S.C. § 482(c); and the defendant union having taken an appeal of said judgment but, as mandated by 29 U.S.C. § 482(d), no stay of the court-ordered election being permitted; and

The Secretary of Labor, through his delegee, Gerard Gumpertz, having conducted a pre-nomination/pre-election conference on May 24, 1976 at which time ground rules for the new election were discussed; and Mr. Gumpertz having written to the union officials three times requesting compliance with directives related to the forthcoming supervised elections, the latest by letter dated June 15, 1976 wherein certain ground rules and the timing for each of the procedures involved in the new election were set forth and compliance by the union with certain stated requirements requested not later than June 23, 1976; and the union having failed to comply with substantially all the Secretary's requirements by the close of business June 23, 1976, having instead by letter of June 22, 1975 taken issue with various directives of the Secretary; and the Secretary, by his attorney Robert B. Fiske, Jr., United States Attorney for the Southern District of New York, having moved by order to show cause for an order, inter alia, compelling the defendant union's compliance with the Secretary's directives; and the Court having heard argument on July 1, 1976 on each of the directives issued by the Secretary with which the union has not complied, as itemized in Exhibit "E" annexed to the Secretary's motion papers, and having read those portions of the parties' papers previously submitted to this Court and to the Court of Appeals for the Second Circuit that have any relevance to the matters now before this Court; and the Court having made certain rulings during the course of said argument on July 1, 1976 as follows:

1) that an arrangement embodied in the union's International Constitution and the union's Offshore Division's By-Laws is in violation of the Act in that it permits the union's International President, Vice-President and Secretary-Treasurer, elected by the membership at large, to become, automatically by virtue of their election to International office, the three principal officers (Executive Officer, Assistant Executive Officer and Financial Officer) of the Offshore Division, a separate labor organization, without there being a separate election among the members of the Offshore Division alone for their own three principal officers (hereafter the "invalid arrangement"); and

2) that the union's General Executive Board ("G.E.B.") is sufficiently empowered by the union's International Constitution to decide those matters which the Secretary, under his supervisory authority, has directed the union to decide or when necessary is sufficiently empowered to permit the Offshore Division's Executive Council to decide those matters which, under the provisions of the Offshore Division By-Laws, may be more appropriately decided by the Offshore Division Executive Council; and

3) that the G.E.B. is empowered to and must decide specifically those matters itemized as numbers 1, 2, 4, 5, 6 and 7 on pages 9 and 10 of the Secretary's June 15, 1976 letter to the union (Exhibit "C" annexed to the Secretary's motion papers);

4) that the Offshore Division Executive Council is empowered to and must decide specifically that matter itemized as number 3 on page 10 of the Secretary's June 15, 1976 letter to the union (Exhibit "C" annexed to the Secretary's motion papers);

5) that the Offshore Division by its Executive Council must supply to the Secretary the information requested in that matter itemized as number 3 on page 10 of the Secretary's June 15, 1976 letter;

6) that the union by its G.E.B. is empowered to and must decide whether the union's International Constitution and Offshore Division By-Laws permit one member to run simultaneously for more than one office in two separate elections and, if so, to submit to the Secretary for his review any decision reached and the conditions under which such a member is permitted to run; and

7) that formalized campaigning efforts in union halls by any candidate or by those acting on behalf of any candidate shall not be permitted unless first approved by the Secretary;

NOW, on motion of Robert B. Fiske, Jr., United States Attorney for the Southern District of New York, attorney for plaintiff herein, and it appearing that the following orders are necessary to ensure the effectiveness of this Court's judgment and order entered April 15, 1976 and there appearing good reason therefor, it is hereby

ORDERED that:

1) the arrangement described above permitting the three International officers to become the three principal officers of the Offshore Division is declared invalid and the union shall not adhere to any provision in its International Constitution and its Offshore Division's By-Laws which permits this invalid arrangement to continue in effect nor shall it substitute any other provisions which in any way permits the invalid arrangement to continue; and

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2) the union's G.E.B. is empowered to make decisions on those matters requested of the union by the Secretary during the course of the instant court-ordered supervised election; and

3) the G.E.B. shall decide specifically those matters itemized as numbers 1, 2, 4, 5, 6 and 7 on pages 9 and 10 of the Secretary's June 15, 1976 letter to the union (Exhibit "C" annexed to the Secretary's motion papers) and submit any decisions it may reach to the Secretary by July 9, 1976 or by such later date as the Secretary may authorize; and

4) the Offshore Division's Executive Council shall decide specifically that matter itemized as number 3 on page 10 of the Secretary's June 15, 1976 letter to the union (Exhibit "C" annexed to the Secretary's motion papers) and submit any decision(s) it may reach to the Secretary by July 9, 1976 or by such later date as the Secretary may authorize; and

5) the Offshore Division by its Executive Council shall supply to the Secretary the information requested in that matter itemized as number 8 on page 10 of the Secretary's June 15, 1976 letter and such information shall be supplied to the Secretary by July 9, 1976 or by such later date as the Secretary may authorize; and

6) the union by its G.E.B. shall decide whether the union's International Constitution and Offshore Division By-Laws permit one member to run simultaneously for more than one office in two separate elections and, if so, shall submit to the Secretary for his review, by July 9, 1976 or by such later date as the Secretary may authorize, any decision reached and the conditions under which such a member is

permitted to run; and

7) formalized campaigning efforts in the union halls by any candidate or by those acting on behalf of any candidate shall not be permitted unless first approved by the Secretary; and

8) the union and its officers and representatives shall comply with all reasonable directives the Secretary may issue hereafter in connection with the instant court-ordered supervised election and shall not further delay the schedule set forth by the Secretary for each phase of the election process involved in this court-ordered supervised election.

Dated: New York, New York

July 2 , 1976

Constance Baker Motley

CONSTANCE BAKER MOTLEY
United States District Judge

76-6076

To be argued by
Marvin Schwartz

United States Court of Appeals

For the Second Circuit

Docket No. 76-6076

W. J. USERY, Secretary of Labor,
UNITED STATES DEPARTMENT OF LABOR,
Appellee,

against

INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, INTERNATIONAL MARITIME DIVISION, ILA, AFL-CIO,
Appellant.

DEFENDANT-APPELLANT'S BRIEF

Marvin Schwartz
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Marvin Schwartz
Burton M. Epstein
Of Counsel

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

---x

W.J. USERY, Secretary of Labor,
United States Department of Labor, x

Plaintiff-Appellee,
x
-against-

INTERNATIONAL ORGANIZATION OF x
MASTERS, MATES AND PILOTS, INTERNATIONAL MARITIME DIVISION, ILA, AFL-CIO, x

Defendant-Appellant.
x
---x

DEFENDANT-APPELLANT'S BRIEF

Preliminary Statement

This is an appeal from a summary judgment ordering defendant International Organization of Masters, Mates and Pilots ("the Union" or "IOMM&P") to conduct a new referendum election for its three International officers and all of its Offshore Division officers, under the supervision of the Secretary of Labor, to be completed no later than the end of 1976. Jurisdiction of the action is founded in Title IV of the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA").

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The District Court's Decision to invalidate the 1971 election of the defendant was based solely upon the distribution by the Union of a single piece of literature. Slightly more than a month before that election the IOMM&P was also conducting a separate union-wide referendum on a proposed affiliation with another labor organization, an issue vital to the future direction and perhaps survival of the IOMM&P. In connection with that separate referendum, and a month before the election, the union distributed to its membership a written newsletter (hereinafter affiliation newsletter) which contained third party statements complimentary to the union President (O'Callaghan) for sponsoring the affiliation and derogatory of the stand taken by the principal opponent of affiliation (Sheldon), who also was the rival candidate for President in the forthcoming election. The District Court held that this affiliation newsletter constituted prohibited campaign propaganda, and its distribution invalidated the 1971 election of all three of the International officers and all of the 41 Offshore Division Officers.

Under the IOMM&P Constitution elections of the three International Officers and all of the Offshore Division Officers must be held by referendum every three years; and the next election was held, as required, and nominations for that election began in June 1974 and the ninety day balloting period was finally completed in December of 1974. However, in both the

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Presidential and Vice-Presidential races, no candidate received the 40% plurality prescribed by the Constitution as the minimum vote necessary for outright victory. Accordingly, a run-off was held for the top positions, which extended the election until June 1975. The incumbent President (O'Callaghan), the beneficiary of the challenged 1971 affiliation newsletter was defeated in the 1975 run-off. In this 1974-1975 election, the O'Callaghan "slate" lost two of the three International offices; two of the three Offshore Division Vice President offices; and more than two-thirds of the Offshore Division Port Agents.*

The summary judgment motion below was made before completion of the run-off election. After its results became known, plaintiff advised the District Court that he continued to press his motion, and the Court in March 1976 thereafter granted the judgment now on appeal.

The result of the decision below is to compel this union, which has held lengthy and expensive referendum elections in 1974 and 1975, to hold another such election for all offices in 1976. And because the three-year Constitutional term of office extends only from 1974 to 1977, still another election would be required in 1977, the very next year.

The decision below also creates an intolerable uncertainty as to the validity of certain provisions of the IOMM&P Constitution which bear on the officerships of the principal IOMM&P

---

* These regular triennial elections, particularly when there (cont.)

*(cont. from p. 3) is a run-off, require great effort and entail enormous expense. Under the applicable Constitution and Offshore Division By-Laws procedures, an International Ballot Committee supervises the entire election process. In order to insure geographical representation to the various national areas involved in these elections, the Constitution requires the Ballot Committee to be composed of members coming from the Atlantic Coast, the Pacific coast and the Gulf coast (in the 1974 election there were five Ballot Committee members). The Ballot Committee is required to function at all stages of the electoral processes from the prenomination conferences; to the nominating period; to the preparation and sending out of the ballots; and finally extending through the receipt and counting of the ballots at which time all challenges are made. The Ballot Committee must then sit and hear the challenges and decide them. Traditionally, and under the practice of this Union, the hearings on the challenges are conducted with a stenographic transcript in the nature of a full adversary hearing with representation of the various candidates by their several different attorneys. These hearings alone normally extend over a period of at least a week. During a normal election period, the Ballot Committee will meet on five or six separate occasions and each occasion will be for a substantial period of time. The expenditures incurred on behalf of the Ballot Committee are very considerable but they are mandated by the procedures described in the Union's Constitution and By-Laws and they are deemed necessary to insure confidence in the electoral process.

Under the Constitution, it is also provided that the actual conduct of the count be conducted by an impartial agency. During recent years, the Union has used the American Arbitration Association for this process. Because of the thousands of votes cast; the many different candidates for the various offices; and the election of the large number of convention delegates, the American Arbitration Association must assign a substantial number of persons to the election task. This too represents a considerable expense which is also mandated by the Constitution in the interests of assuring the impartiality and integrity of the election process.

The impartial agency, in this instance the American Arbitration Association, itself engages an independent arbitrator to hear any appeals from any decision of the Ballot Committee. This is in accord with the rules of the American Arbitration Association which have become a part of the electoral customs of the Union. This also represents an additional expense.

The cost of printing the ballot and explanatory material, the evelopes and return envelopes and expenses of mailing are also substantial. Because the election of International officers is accompanied by election of the Offshore Division officers, this involves offices allocated on a port-wide or Division-wide basis, *(continued) the ballots are not uniform for all members of the International. Special ballots must be prepared. There is one ballot for the International election and a separate ballot for the Division election. A special newspaper supplement must be prepared for distribution to all of the membership. It contains not only the names of the candidates but their photographs and a statement that each candidate is entitled to include on behalf of his candidacy. Thus, the printing costs are far more extensive than would be expected in a simple, uniform ballot for a limited number of offices.

For the 1974-1975 election, the costs for the various items outlined above were as follows:

Printing	$ 26,477.56
Ballot Committee Expense	85,897.33
American Arbitration Association for election and run-off election	130,111.34
Cost of stenographic transcript for Ballot Committee proceeding and American Arbitration Association Arbitrator's proceedings	10,360.05
John Harold, Esq., Attorney for the Ballot Committee	10,000.00
	$262,846.28

(J.A. 1309a-1317 ; 1348a; 1347a; 1352a;
2062a-2114a; 3082a-3086a)

subdivision, its Offshore Division. Under the IOMM&P and Offshore Division Constitutions, the three elected officers of the International also serve, without pay, as executive and fiscal officers of the Offshore Division. The Secretary of Labor has challenged the validity of these Constitutional provisions, but the judgment below leaves this issue undecided. Thus, the parties, under that judgment, would enter into a supervised election with no indication of the validity of material provisions of the Constitution which have squarely been drawn into issue in this case.

Questions Presented

1. Whether the affiliation newsletter dealing directly and exclusively with another independent 90 day mail ballot referendum being conducted by the Union a month before the election, the timing of which independent referendum is also controlled by the Union's Constitution, constitutes prohibited campaign propaganda because it contains statements by third parties either commendatory or derogatory in response to the positions taken on the independent referendum issue by the principal spokesmen of the two forces (O'Callaghan and Sheldon) who also happen to be presidential opponents in the coming election.

(a) Whether a 1971 temporary injunction, based solely on the affiliation newsletter and issued upon affidavits and without evidentiary hearing, ordering the Union to distribute counter literature of Sheldon but refusing to stay the election, is collateral estoppel on the issue of whether or not the affiliation newsletter was prohibited campaign propaganda, and therefore foreclosing its consideration by this Court in this action.

2. Whether the Court below having decided by Summary Judgment that the affiliation newsletter violated the governing statute was therefore foreclosed from inquiring into all of the relevant evidence and exercising its sound jurisdictional discretion in determining whether the purposes of the governing statute will be served by (a) requiring a new election under the supervision of the Secretary or (b) rejecting the Union's proposals in its Counter-Judgment and Order that such supervision be of the Union's next regularly scheduled election just one year away.

3. Whether the Court below erred in ordering a new election to be supervised by the Secretary of Labor without deciding the tendered issue as to the validity of the Union's Constitutional provisions making the three duly elected International officers the responsible executive and fiscal officers of the Union's Offshore Division.*

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* Under the Constitution, these three officials have the same responsibilities in other fully formed divisions. This is unchallenged by the Secretary because he has received no complaint from a member.

Statement of the Case

The International Organization of Masters, Mates and Pilots

Some background of the defendant-appellant and the circumstances which led up to its 1971 election will help the Court to understand the Questions Presented in this case.

The IOMM&P is an international labor organization consisting primarily of licensed deck officers serving the American merchant marine. It has approximately ten thousand members residing all over the country. At any given time a large proportion of the membership is serving aboard ship.

Because of the dispersal of its membership, the IOMM&P conducts its most important business by membership referendum; and because of the length of voyages, the referendums extend over a relatively protracted period.

The International officers and the Offshore Division officers of the Union are elected every three years, also by referendum. By constitutional mandate, both elections and non-election referendums must be conducted through an impartial balloting agency. The expense involved is considerable.

The election challenged in this action took place in 1971. This election was the first to be held under the newly structured organization which came into being in October 1970 as a result of a membership referendum that adopted a new

International Constitution which radically altered the internal structure of the Union. Recognizing that this first election would be unusual, it was designated specifically in the new International Constitution to be the "transitional"election,and the period of occupancy of office was to be known as the "transitional term of office." Similar recognition of the unique nature of this first "transitional" election was set forth in the by-laws of the Offshore Division of the Union, which were drafted after the proposed new Constitution received Convention approval, and which came into being also by membership referendum on October 1, 1970.

Prior to 1970, the Union was composed of a number of semi-autonomous Offshore, Inland and Pilots Locals. The great majority of these were the Offshore locals, whose principal offices were in the major ports on the Atlantic, Gulf and Pacific Coasts. The rights, duties and privileges of the members were governed by an International Constitution, as well as by By-Laws of each man's individual local. There were three International officers, a President, Vice-President and Secretary-Treasurer who were elected by all the members of the Union, and Local officials who were elected by the membership of each particular local. The salaries of the local officials were determined by each local. The annual dues of a member was determined by his own Local's By-Laws, subject only to a minimum amount set forth in the International Constitution.

International Constitution which radically altered the internal structure of the Union. The principal contestants were Captain Thomas F. O'Callaghan, the incumbent President and Captain Lloyd F. Sheldon, a former President who was seeking to reclaim the office.

The nominations took place in June and July, 1971. The ballots were mailed to the members on September 21, 1971, and the voting period extended for ninety days thereafter.

The Referendum on Affiliation with the International Longshoremen's Association

For many years the IOMM&P has been engaged in a bitter jurisdictional rivalry with another maritime union, the National Marine Engineers Beneficial Association ("MEBA"). Although, as their respective names indicate, the IOMM&P was organized to represent masters, mates and pilots (deck officers) while the MEBA was organized to represent marine engineers, the MEBA has not been satisfied with this jurisdictional division and has raided the IOMM&P deck officer jurisdiction whenever it could. The MEBA even established a separate division, the Associated Maritime Officers ("AMO") designed to encompass deck officers and to acquire deck officer representation throughout the merchant marine. The battles between the two Organizations are amply, though only partially reflected in the reported decisions.

By 1970 or 1971 Captain O'Callaghan and his fellow officers had become convinced that the IOMM&P could survive only if affiliated with another, larger maritime organization. In this decision they were influenced not only by the escalating jurisdictional rivalry, but by the increasingly close alliance developing between MEBA and one of the major seamen's unions.

After some negotiation, the IOMM&P worked out an agreement of affiliation with the International Longshoremen's Association ("ILA"), a much larger union representing longshoremen, harbor workers, and other waterfront workers. By the early summer of 1971 the affiliation agreement had been completed and signed by the Presidents of ILA and IOMM&P, subject to required Constitutional ratification procedures of both organizations.

The IOMM&P Constitution called for action at the International Convention scheduled for later that same summer, followed by a referendum ratification vote. Under the Constitution, nominations for union office were also to be made at the same Convention. The Convention was held in Galveston, Texas from July 26-30, 1971; and ILA President Thomas W. Gleason addressed the membership in support of the affiliation proposition. At the same Convention, Lloyd F. Sheldon, a former President who was nominated at that Convention as a Presidential candidate, spoke in opposition to the affiliation with ILA. His opposition remarks immediately preceded the speech of ILA President Gleason, and Gleason referred to Sheldon's opposition in rather uncomplimentary fashion.

The referendum on the ILA affiliation followed shortly after the favorable Convention action. The ballots were sent out on August 20, 1971. The ballots for the regular election were to be mailed September 21, 1971, about a month later.

The Affiliation Newsletter* (J.A. 109a-116)

On August 19, 1971, in connection with the affiliation referendum,the IOMM&P mailed to the union membership an eight-page newsletter, setting forth the terms of the affilation resolution, reporting on the favorable Convention action, and candidly designed to convince the membership to vote for the proposition. Aware that nothing in the law sterilizes the union leadership from expressing its point of view or from seeking to persuade the members to take action deemed essential to the union's interests, the IOMM&P put out a hard-hitting document detailing the benefits of affiliation and answering the arguments and innuendos, including scurrilous racial slurs, being circulated by the opponents. The pamphlet also noted that much of the opposition was being stimulated, promoted and financed by the MEBA and by MEBA sympathizers (both within and without the ranks of the IOMM&P), who either wished the MM&P to remain vulnerable to MEBA raids or who preferred affiliation with MEBA to affiliation with ILA.

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*The Joint Appendix is hereafter referred to as J.A. with page numbers.)

The newsletter included excerpts from the remarks of ILA President Gleason to the IOMM&P Convention, portions of a speech delivered to the same Convention by John Bowers, the Executive Vice-President of the ILA, and comments in favor of affiliation by the Chairman of the House Merchant Marine and Fisheries Committee, Congressman Edward A. Garmatz.

The newsletter made no reference to the forthcoming union election or to the candidacies of any persons running for union office. There were specific responses to Captain Sheldon's Convention speech in opposition to affiliation, including an excerpt from ILA President Gleason's own Convention speech, made immediately following Sheldon's, criticizing Sheldon's motives. At no point was Sheldon mentioned by name, and the references to him dealt solely with his opposition to the affiliation. Similarly, portions of the excerpted Gleason, Bowers and Garmatz remarks commended Captain O'Callaghan for initiating and supporting the affiliation, but again the scope of the comments was meticulously confined to the subject matter of the newsletter, the ongoing referendum on the vital issue of affiliation with the ILA.

Nowhere did the contents of the newsletter refer directly or indirectly to other candidates for any office, either incumbents or their opponents.

Judge Croake's 1971 Preliminary Injunction (J.A. 1463a-1469a)

On September 16, 1971, about a month after the distribution of the affiliation newsletter and on the eve of the commencement of the 1971 election, Captain Sheldon and two colleagues brought an action to enjoin the election and to compel the union to distribute Sheldon campaign material at union expense.* Sheldon complained not only of the affiliation newsletter but of another publication distributed by the IOMM&P. (J.A. 1492-1539a)

The action was accompanied by a motion for a preliminary injunction. (J.A. 1464a) Judge Croake, to whom the matter was assigned, accepted the motion on affidavits, without holding an evidentiary hearing. Nearly a month later, after the election ballots had been mailed, Judge Croake ruled that the newsletter constituted campaign literature entitling Sheldon to similar union-financed distribution,** ordered that this be done, but refused to enjoin the continuation of the election, noting that he was determining merely a motion for preliminary injunction. (J.A. 1463a-1469a)

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*At no time did Sheldon or any other opponent of the affiliation referendum seek either the union mailing lists or other union facilities for distribution of any literature on the affiliation referendum itself. Their sole effort was directed toward the election and the distribution, at union expense, of Sheldon campaign literature. Thus the issue dealt within this Court's opinion in *Sheldon v. O'Callaghan*, 497 F. 2d 1276 (2d Cir. 1974), *cert. den'd*, 419 U.S. 1090, does not arise in the present case.

**Judge Croake found that the other publication complained of by plaintiffs did not constitute campaign literature.

Because the election was under way, the union faced the alternative of promptly complying with Judge Croake's Order and thus presumably saving the election, or taking an appeal. The time constraints were such that even an expedited appeal, if unsuccessful, would have delayed matters sufficiently to doom the ongoing election and require a new one. The union chose to comply with Judge Croake's order and immediately mailed Captain Sheldon's literature.

The election resulted in victory for Captain O'Callaghan. His rival appealed to the Secretary of Labor, and this action followed.

The 1974 Election

By 1974 the Secretary's lawsuit had not yet come to trial. In accordance with the requirements of its Constitution, and starting in June 1974, the IOMM&P proceeded to the nomination and election of its three International officers and all of its Offshore Division Officers. Captain O'Callaghan stood for re-election; he was opposed by five other candidates. The two other incumbent International Officials were opposed by five candidates. There were 106 candidates for 36 Offshore Division offices on the Atlantic, Pacific and Gulf coasts. (J.A.2062a-2114a) The election for the Offshore Division offices was completed at the end of December 1974 and early in January 1975 and these officials took office. The results of the election in the Offshore Division were unprecedented in the history of the Union. Two-third of the incumbent Offshore Division Port Agents were defeated and in some of the ports, the defeat of the incumbent Port Agent and Assistant Port Agents was even more striking. In the Port of New York for example, where there are six elective offices, only one incumbent survived the election. However, under the Union's Constitution, the three International officials must receive at least 40% of the votes cast in order to win outright. Only the International Secretary-Treasurer achieved this percentage. O'Callaghan and the incumbent International Executive Vice President, Caldwell, did not and accordingly a run-off ensued between the two top candidates for the International President's Office, Captains Scavo and O'Callaghan and the two top candidates for International Executive Vice-President's office, Captains Caldwell and Johnson. The run-off election ended in June 1975 and Captain Scavo won by a vote of 3176 to 2381 and Captain Johnson won by a vote of 3293 to 2231. Captain Scavo and Captain Johnson were thereupon installed in office and have been serving since then. If allowed to serve their full Constitutional term, they would, along with the International Secretary-Treasurer and all of the Offshore Division officers remain in office until the Fall of 1977.

After the completion of the 1974-1975 election, it was challenged by one of the Union's members who argued the invalidity of the Union's Constitutional provision making the three duly elected International officials the responsible Executive and Fiscal Officers of the Union's Offshore Division. Solely on this basis, the Secretary of Labor filed a challenge to the 1974 election. The same issue raised by the Secretary in its challenge to the 1974-1975 election was briefly referred to by the Secretary in its motion for Summary Judgment in the 1971 election case. The Court below did not decide that issue as part of its Summary Judgment and, without explanation, dismissed the Secretary's challenge to the 1974-1975 election as moot in view of its ruling on the 1971 election. (J.A. 2890a)

The Decision Below (J.A.2860a-2894a)

As indicated above, the motion for summary judgment preceded the run-off election, but the decision was rendered after the election had been concluded and Captain Scavo installed as President.

Judge Motley held that the 1971 candidates had exhausted their union remedies, by timely complaint to the union and then to the Secretary, and that summary judgment, if otherwise justified, was an appropriate procedure under Title IV of the LMRDA.*

Although the Secretary predicated his motion on several alleged infirmities in the 1971 election (not all of which applied to the contests for the principal international offices), the Court rested its finding of violation exclusively on the newsletter dealing with the ILA affiliation referendum. In but a single sentence of its opinion, with no discussion of either the nature or context of the newsletter, the Court stated:

> "This court, in examining the Newsletter itself, and considering the context in which it was distributed, concurs in the opinion of Judge Croake that the Newsletter constitutes campaign literature distributed in violation of 29 U.S.C. §481."

Judge Motley also concluded, however, that Judge Croake's preliminary injunction order was collateral estoppel on this point and that the issue was, therefore, no longer open to independent determination.

The District Court apparently also believed that factual inquiry into the question of mootness was foreclosed by the Supreme Court decision in Wirtz v. Local 153, Glass Bottle Blowers, 389 U.S. 463 (1968). Although in that case, incumbent officials had won the subsequent election in which illegal eligibility requirements were continued, and the Supreme Court had stressed the unwarranted advantage accruing from a term of of incumbency to those officials after a tainted election, the Court below regarded the factual distinction as immaterial and the need for a supervised election before the next regularly scheduled election as paramount. The Court stated that the tainted 1971 election may have prevented others from gaining the advantage of incumbency, may have induced others to withhold their candidacies in 1974 while awaiting a supervised election, and may have led to a host of different decisions in the intervening three years that in turn may have influenced the 1974 election results.

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*No appeal is taken from these portions of the decision below.

In failing to decide the single issue raised by the Secretary in its challenge to the 1974-1975 election, the District Court left unanswered critical questions as to the validity of union constitutional provisions bearing directly on the structure of the union government. The IOMM&P comprises three functional divisions, the Offshore Division, the Inland Division, and the Pilots Division. To overcome the abuses of fragmented and often conflicting power blocs and to centralize both authority and responsibility in the national officers elected by the entire membership, the Constitutions of the International and its Divisions provide that the three principal International officers shall also serve as executive officers of the three Divisions and members of the Division Executive Boards. Although they comprise but a small minority of the Offshore Division Executive

Board (three of seventeen), the Secretary has challenged the validity of this entire constitutional structure as applied to that Division. The decision below simply and without explanation declared that issue moot and thus offers no guidance on the resolution of that issue. The union is thus forced into a supervised election without any determination as to the validity of the government constitutional framework.

POINT I

A. THE COURT BELOW ERRED IN HOLDING THAT THE AFFILIATION NEWSLETTER CONSTITUTED PROHIBITED CAMPAIGN LITERATURE

B. THE COURT BELOW ERRED IN HOLDING JUDGE CROAKE'S PRELIMINARY INJUNCTION DECISION ON THE "CAMPAIGN LITERATURE" ISSUE TO BE COLLATERAL ESTOPPEL

The Court Below erred in Holding that the Affiliation Newsletter Constituted Prohibited Campaign Literature

There were four affidavits* filed by the defendant-appellant in opposition to the Secretary's motion for Summary Judgment. The decision by the Court below, granting Summary

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*(J.A.1774a-1856a)

Judgment without trial or any hearing, accordingly holds that even if the defendant proved all of the facts and circumstances set forth in those affidavits, the Affiliation Newsletter would nevertheless be campaign literature in violation of 29 U.S.C. §481(g). The facts, relevant to the Affiliation Newsletter, and set forth in those affidavits are as follows.

The IOMM&P held its 60th Convention during the period July 26-28, 1971 in Galveston, Texas. Many things were on the agenda for that Convention, among which was a proposed resolution for the affiliation of the IOMM&P with the International Longshoremen's Association. (J.A.1781a-1784a) Such resolution came about after many months of preliminary discussions between the two unions, preliminary approval by the AFL-CIO Executive Council, and many other ground work steps. The resolution, adopted by the Convention was to be submitted to a referendum vote of all of the IOMM&P membership. (J.A. 1738a)

The IOMM&P Constitution required passage of the resolution by a two-thirds majority of the delegates at a duly convened convention. (J.A. 1336a) The resolution submitted to the Convention was an Agreement of Affiliation which had been completed and signed by the Presidents of the International Longshoremen's Association and the IOMM&P in the early Summer of 1971. As indicated at pages 8 and 9 supra, the affiliation represented action by the IOMM&P to protect its jurisdiction and to protect its hard-won collective bargaining standards. The decision was a difficult one for the IOMM&P for a large variety of reasons. Although the need for the affiliation was apparent to the officials involved in the day to day operation of the IOMM&P, it presented many problems, emotional and otherwise for the IOMM&P membership. The affiliation vote clearly reflected that the entire issue was not a popular one and that this momentous decision was approved only after enormous effort. The affiliation amendment eventually passed by a vote of 2595 to 2296. (J.A. 1784a)

The President of the International Longshoremen's Association, AFL-CIO, Thomas W. Gleason, addressed the delegates and spoke strongly in favor of that affiliation. His speech was made in response to a speech made by Captain Sheldon who spoke directly in opposition to this issue and had been campaigning vigorously to defeat affiliation. (J.A. 1836a-1837a)

Gleason's speech was directed solely to the issue of affiliation and did not deal with the forthcoming election for the IOMM&P. (J.A. 1834a) His remarks were not discussed in advance with the incumbent officials of the IOMM&P nor were they dictated in any way by the IOMM&P. (J.A. 1834a) Several sentences in President Gleason's address to the Convention were directed to Captain Sheldon. President Gleason's words were strong and angry and "they came from my heart." (J.A. 1834a) There had been a great deal of literature distributed by the groups with which Captain Sheldon was politically aligned and which Captain Sheldon embraced. Much of the literature was blatantly racist in content. (J.A. 1834a) The literature which Gleason had seen attempted to play on the racist fears of the members by indicating clearly that if the IOMM&P affiliated with the International Longshoremen's Association, it was likely to become dominated by a black controlled International union. This piece of literature for example which was distributed throughout the south showed Captain O'Callaghan with two black Vice Presidents of the International Longshoremen's Association and was accompanied by obvious and pointed language. (J.A. 1835a Other literature opposing the MM&P-ILA affiliation and with which Sheldon was involved repeated charges that the ILA wanted to take over the MM&P contracts and pension and welfare funds. In addition, testimony would have been submitted to show that much of the opposition literature was financed by rival labor organizations who at the very time were seeking to raid the IOMM&P and strip it of its jobs and contracts. (J.A. 1835a) It was in this context that President Gleason made the remarks he did at the regularly convened Convention of the IOMM&P in Texas in July 1971.

After the delegates passed the resolution calling for the submission of the affiliation question to membership referendum, a ballot committee to conduct the referendum was elected by the Convention delegates and the American Arbitration Association was designated as the impartial balloting agency to conduct the referendum - - - all of which is required by the IOMM&P

Constitution. (J.A. 1336a) Attendant upon the submission of the ballots to the membership the Affiliation Newsletter, entitled "60th Convention Newsletter on the Resolution of Affiliation of the IOMM&P with the ILA" was sent to all of the union membership. This Newsletter reported on the resolution adopted at the 60th Convention, presented excerpts from statements made at the Convention by President Gleason and otherwise gave background material with respect to steps leading to the affiliation resolution and the importance of such affiliation. (J.A. 1783a;109a-116a) This Affiliation Newsletter was mailed to the membership on August 19, 1971, the day before the affiliation ballots went out. (J.A. 1783a) The ballot on the ILA affiliation was sent out on the very next day, August 20, 1971.

Slightly more than a month elapsed before the balloting for the election commenced. Those ballots were mailed on September 21, 1971. (J.A. 1785a)

Despite all of the foregoing, the Court below made short shrift of the Affiliation Newsletter. The Court stated simply:

> "This court, in examining the Newsletter itself, and considering the context in which it was distributed, concurs in the opinion of Judge Croake that the Newsletter constitutes campaign literature distributed in violation of 29 U.S.C. §481."

Whatever else it is, the Affiliation Newsletter is a new and atypical application of 29 U.S.C. §481. Nevertheless, there has been no citation of any authority by either the Court below nor by the Secretary which supports the proposition that a union publication, issued under the circumstances described above, constitutes prohibited campaign literature. In searching the Opinion of the Court below we find only one case cited which deals with a violation of 29 U.S.C §481. In that case, Hodgson v. Liquor Salesman's Union, Local No. 2 of State of New York, 334 F. Supp. 1369 (1971), aff'd 444 F. 2d 1344 (2d Cir. 1971) discussing that case, in a different but related context, the Court said:

> "...this Court considered union journals published just prior to an election and found them to contain statements designed to promote the candidacy of incumbents in violation of 29 U.S.C. §481." (J.A. 2876a)

However, the facts in that case were entirely different. There an election was scheduled for January 1970 and the incumbent President, utilizing the Union's newspaper, published articles in the December and January issues, which were devoted to the support of the re-election of the incumbent officials and the defeat of the opposing slate of candidates.*

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*Even a cursory examination of 29 U.S.C. §481 reveals that all of its subdivisions, (a) through (g), deal with the distribution of literature during an election. At most, these subsections control the distribution of literature distributed in relationship to an election campaign.

Nevertheless, despite the fact that the Secretary is clearly "exploring the periphery", of the statute in this case, the Court below without a hearing, without a trial; without the citation of any other cases; and without reference to any supporting legislative history, held that the Affiliation Newsletter was prohibited campaign literature.

The Court Below erred in Holding Judge Croake's Preliminary Injunction Decision on the "Campaign Literature" issue to be Collateral Estoppel

In Lummus Company v. Commonwealth Oil Refining Co., 297 F. 2d 80, 89 (2d Cir. 1961), this Court recognized

> "the rule that action with respect to a temporary injunction, whether by a trial court or an appellate court, ordinarily is not 'binding on the trial court nor upon either of the parties in considering and determining the merits of the controversy,' Benson Hotel Corp. v. Woods, 168 F.2d 694, 697 (8 Cir. 1948); Walker Memorial Baptist Church, Inc. v. Saunders, 284 N.Y. 462, 474 35 N.E. 42, 47 (1941)..."

The Court below, in holding Judge Croake's preliminary injunction to be collateral estoppel, relied upon Zdanok v. Glidden Company, Durkee Famous Foods Division, 327 F.2d 944 (2d Cir. 1964), cert. denied 377 U.S. 934. In that case, the trial was bifurcated with basic issues of liability tried first, and issues pertaining to individual plaintiffs and their damages reserved for future trial. The issue of liability was fully tried, the liability decision appealed to this Court and considered in an extensive opinion, and review sought in the United States Supreme Court. It was that determination of liability which was advanced as collateral estoppel in a subsequent action. In upholding the contention, this Court observed that "The Zdanok case was tried in 1960 as fully as the parties wished." (327 F. 2d at 949)., and only because of the reservation of the damage issue was the determination technically non-final. In the portion of its opinion quoted by Judge Motley herein, this Court clearly limited its ruling to dispositions which while not technically final "have nevertheless been fully litigated."

Judge Croake's 1971 preliminary injunction was not intended to meet this standard, and in fact did not. Judge Croake held no evidentiary hearing, he decided a preliminary injunction motion on affidavits, and his opinion clearly demonstrates that he viewed his disposition as a typical exercise of interlocutory relief. In no sense was the issue whether the 1971 newsletter constituted prohibited campaign material "fully litigated." And Judge Croake's order was never appealed for the eminently practical reason that to do so would have eliminated any possibility of saving an ongoing election on which the union had already expended tens of thousands of dollars. Instead, notwithstanding its belief that the order was erroneous, the union complied with it as promptly as possible.

In the Lummus Co. case, supra, the Court noted that the applicability of collateral estoppel "turns upon such factors as the nature of the decision(i.e. that it was not avowedly tentative), the adequacy of the hearing, and the opportunity for review" (297 F.2d at 89). In that case a proceeding to enjoin an arbitration had been heard and decided, the order appealed to the Court of Appeals for the First Circuit, that Court had issued a "comprehensive opinion reversing the decision below, vacating the injunction and ordering arbitration, and review was sought in the Supreme Court. In the subsequent action, this Court held the First Circuit's determination of arbitrability to be collateral estoppel. In doing so, it noted that under the applicable statute, an issue of arbitrability is fully triable unless no genuine factual issue exists; the standard is thus akin to that in a motion for summary judgment.

As with Zdanok, the contrast between Lummus and the instant case is striking. Here there was no evidentiary hearing at all. Nor is there indication that Judge Crooke intended his determination to be conclusive for all subsequent purposes. And nothing in his opinion indicates that he was applying summary judgment standards. On the contrary, he simply decided a preliminary injunction motion on the papers, as courts are entitled to do and as they frequently do in practice.

POINT II

THE DISTRICT COURT ERRED IN ORDERING A NEW SUPERVISED ELECTION TO BE HELD IN 1976, ONLY ONE YEAR PRIOR TO THE NEXT REGULAR ELECTION, AFTER THE INCUMBENT PRESIDENT, THE ALLEGED BENEFICIARY OF THE 1971 AFFILIATION NEWSLETTER, SUFFERED DEFEAT IN THE UNTAINTED 1974-1975 REGULAR ELECTION

In 1968, the Supreme Court decided that a new, regular election during the pendency of a lawsuit challenging the prior election does not necessarily moot the action. Wirtz v. Glass Bottle Blowers, Local 153, 389 U.S. 463 (1968). In that case the Secretary had challenged an eligibility requirement for local office that disqualified a large proportion of the union's membership. Before determination of that challenged a new election was held, under the same eligibility requirements, (See Court of Appeals Opinion 372 F.2d 86; 63 LRRM 2587) and the incumbents were re-elected. After noting the absence of relevant legislative history and the need to accommodate the manifest Congressional intent to assure democratic conduct of union elections while imposing minimal governmental interference with union self-government, the Court emphasized the advantages accruing to incumbents from a tainted term of office and the opportunity thus presented to perpetuate themselves in office. Said the Court (389 U.S. at 474):

> "We cannot agree that the statutory scheme is satisfied by the happenstance intervention of an unsupervised election. The notion that the unlawfulness infecting the challenged election should be considered as washed away by the following election disregards Congress' evident conclusion that only a supervised election could offer assurance that the officers who achieved office as beneficiaries of violations of the Act would not by some means perpetuate their unlawful control in the succeeding election. That conclusion was reached in light of the abuses surfaced by the extensive congressional inquiry showing how incumbents' use of their inherent advantage over potential rank and file challengers established and perpetuated dynastic control of some unions."

The Court also spoke of the "vital public interest in assuring free and democratic union elections" and concluded that "the fact that the union has already conducted another unsupervised election does not deprive of the Secretary of his right" to a supervised election (389 U.S. at 475-476).

Although the Court thus made clear that the mere holding of a second election does not of itself moot the case and that the interests to be served extend beyond the protection of the candidates defeated in the tainted election, the Glass Bottle Blowers opinion does not hold that the initial finding of taint necessarily requires a supervised subsequent election irrespective of supervening events or that factual inquiry into this issue is foreclosed. Nor does the Court's discussion indicate that it was intending to lay down any such per se rule.

The cases following Glass Bottle Blowers have involved similar factual situations. Incumbent beneficiaries of tainted elections have successfully withstood their challengers in unsupervised subsequent elections. Factually, the elements noted in the Supreme Court's Glass Bottle Blowers opinion have been present. The advantages of incumbency have been evidence through the results of the subsequent election. In no case has the incumbent beneficiary of the alleged taint been repudiated and defeated in the next election.*

We recognize that perpetuating incumbents is not the only way that the effects of a tainted election may endure. In some instances, for example, an illegal electoral restriction may persist. In others an atmosphere of coercion may have been created which can be dispelled only by government supervision. In still others, incumbents may seek to retire in favor of hand-picked successors. Or they may manipulate a subsequent election in other ways. But here the only vice found was the distribution of a single piece of literature in 1971, and in 1974 the incumbent President who supposedly benefited from that distribution ran and lost. There is not the slightest factual suggestion in this record,or in the opinion below, of any manipulation or corruption in the 1974 election.

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*The cases subsequent to Glass Bottle Blowers have involved an easing of illegal electoral restrictions but without displacement of the incumbents benefited by the initial illegality, Wirtz v. Hotel, Motel & Club Employees Union, Local 6, 391 U.S. 492 (1968), the effect of invocation of the Secretary's processes upon a union's statutory right to hold an unsupervised remedial election in response to a member's complaint, Hodgson v. Local 400, Bakery & Confectionery Workers Union, 491 F. 2d 1348 (9th Cir. 1974); Hodgson v. Local 1299, Steelworkers, 453 F. 2d 565 (6th Cir. 1971); and perpetuation of incumbents in office through a subsequent unsupervised election in which the original complainant did not run, Wirtz V. Local 1622, Carpenters 285 F. Supp. 455 (N.D. Calif. 1968). In none of these cases do the facts even remotely approach those at bar.

In its opinion, the District Court postulated three conceivable ways in which the alleged taint might have continued: first, that the results of the 1971 election prevented others (presumably Sheldon) "from rightfully developing the...benefits of incumbency"; second, that others may have withheld candidacies in 1974, prefering to wait for a supervised election;* and, third, that between 1971 and 1974, the day to day decisions in the union might have been different and these differences may have led to different results in 1974.

These speculations are unsupported by anything in the record. They are merely another way of stating a per se rule under which nothing that happens after a tainted election can ever affect the necessity of a supervised new election. For it is simply a truism to state that if an election is tainted, there might have conceivably been other victors and this might have yielded different day to day decisions. Nor is there any logical way to dispute the hypothetical speculation that some unknown union member might have withheld his candidacy while awaiting a supervised election. There is, of course, not a scintilla of evidence that this occurred, but if a supervised election is to be required on the basis of this kind of gossamer, then no supervening event, no matter how decisive and conclusive, will suffice to avoid it.

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* This is hard to believe in view of the number of candidates for office in the 1974 election. There were 13 candidates for the three International offices and 106 candidates for the 36 Off-shore Division Offices.

We recognize that in the great majority of cases, the considerations cited in Glass Bottle Blowers and the cases following it will be controlling and a supervised election will be required, notwithstanding an intervening unsupervised election. But this case, we submit, falls within the small area of exception. At the very least, the defeat of the incumbent President O'Callaghan* who was the claimed beneficiary of the 1971 literature requires further factual inquiry and the denial of summary judgment.

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*As indicated at pages 13-14 supra, the results of the 1974-1975 election, in terms of the defeat of incumbents, were unprecedented in the history of the Union. Two of the three incumbent International officials were defeated (incumbent President O'Callaghan and Executive Vice President Caldwell); two-thirds of the incumbent Offshore Division Port Agents were defeated and in some of the ports the defeat of the other incumbents, i.e., Assistant Port Agents was even more striking. In the Port of New York for example, where there were six elective offices, only one incumbent survived the election.

There is always a point at which general language in judicial opinions can be stretched to the point where it becomes ludicrous. Here, the spectacle of a union membership repudiating an incumbent, ousting him from office, and then having the Secretary of Labor insist that he be granted an immediate opportunity to regain his position for the sole reason that he may have acquired it wrongfully in the first place, can only yield a sense of wonderment and incredulity. Truly this is a mechanical jurisprudence carried to its zenith.

But even this is not the entire story. As the District Court recognized in footnote 2 of its Opinion, (J.A. 2890a) the constitutional provisions governing IOMM&P elections are currently in a state of limbo. This Court has held that the 1971 Constitution, which recast the entire structure of the union, was not validly ratified. Sheldon v. O'Callaghan, 497 F. 2d 1276 (2d Cir. 1974), cert. den'd, 419 U.S. 1090, aff'd on second appeal, F. 2d (Feb. 26, 1976). Under the remedial procedure decreed by Judge Knapp in that case, the union must present the Constitution for membership ratification vote; and if it is rejected a new Constitutional Convention must be convened to formulate an acceptable substitute. The entire process must be completed within one year after exhaustion of appeals from his order; which brings us into 1977.

Judge Motley's decision below frankly acknowledges that if the new Constitution is rejected (and it was originally approved in the 1971 vote by a relatively narrow margin), then "yet another election would perhaps be mandated." For reasons which remain unelaborated in the opinion below, Judge Motley characterized this possibility as "far too tenuous to prevent this court from remedying the violations which it finds to have occurred." Inasmuch as the principal practical question below was not whether the next IOMM&P election should be supervised by the Secretary but whether a special election should be required in 1976 instead of awaiting the next regularly scheduled election in 1977, the District Court's conclusory assertion does not meet the real issue. Given the limited nature of the 1971 taint which the Court relief upon and the results of the 1974-1975 election and adding to these factors a basic constitutional uncertainty which might render any special election a nullity but which will be resolved at the latest in 1977 when the next regular election is scheduled, the absurdity in insisting upon plunging forward with a special election in 1976 becomes overwhelming.

The situation becomes particularly incredible in light of the Court's rejection of the union's proposals in its counter-Judgment and Order that such supervision be of the union's next regularly scheduled election just one year away. In all the circumstances, the Secretary's insistence on pressing forward with a 1976 election must be regarded, at least, as a gross abuse of discretion. Inasmuch as nothing in the Act indicates that the District Court is intended merely to rubber stamp the wishes of the Secretary, the decision below must also be regarded as erroneous.

POINT III

THE COURT BELOW ERRED IN ORDERING A NEW SUPERVISED ELECTION WITHOUT PASSING UPON THE CHALLENGED VALIDITY OF INTERNATIONAL AND OFFSHORE DIVISION CONSTITUTIONAL PROVISIONS ESTABLISHING THE GOVERNING STRUCTURE OF IOMM&P DIVISIONS

The 1971 IOMM&P and Offshore Division Constitutions were designed to end the fragmented allocation of powers and responsibilities within the organization and to permit uniform, consistent administration of the affairs of the union through centralizing power and responsibility in the national officers elected by the entire membership of the union. Toward this end, and also for reasons of fiscal economy, the International and Division Constitutions provide that the International President, Vice-President and Secretary-Treasurer, by virtue of their offices, shall serve as the executive and fiscal officers of the three constituent Divisions as well as members of the Division Executive Councils. In the case of the Offshore Division they constitute three of the seventeen Offshore Division Executive Council members. As elected and salaried International officials they receive no additional compensation for their duties as Division officers, and the IOMM&P as a whole is thus able to realize substantial, much-needed fiscal savings.

In the present suit, the Secretary of Labor has challenged this structure as violative of the Act.* Because the International officers are elected by all the members of the entire International, members of the Pilots Division, for example, have a say in the selection of the persons who will serve as executive and fiscal officers of the Offshore Division, and this, plaintiff claims, contravenes of the statute.

The Union maintains that the LMRDA does not impose an absolute requirement that each member of a labor organization have a right to vote for all officers who govern that labor organization, nor does it impose an absolute prohibition against any person who is not a member of a particular subordinate organization (but who is a member of the parent organization) participating in the selection of persons to fill prescribed positions in the subordinate organization. See, for example, Fritsch v. Painters, District Council 9, 493 F. 2d 1061 (2d Cir. 1974); cf, American Federation of Musicians v. Wittstein, 379 U.S. 171 (1964). Specifically, we do not read the Act as imposing an absolute prohibition upon duly elected officers of a parent union serving, by virtue of their offices, as officers of a subordinate union.

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*Technically, the challenge herein relates only to the Offshore Division, simply because no members has complained about the International officers serving as executive and fiscal officers of the other two Divisions. The thrust of the Secretary's objection, however, extends to the basic structure as it affects all Divisions.

The provisions of the IOMM&P Constitution do not deprive any Offshore Division member of the right to vote for all Offshore Division officers, nor do the votes of any members count more than the votes of other members. In Gordon v. Laborers, 351 F. Supp. 824 (W.D. Okla. 1972), the Court stated:

> "Thus, not only is there nothing to indicate that Congress intended to impose a system of voting or representation on unions which would undermine their long-established traditions of representative trade union government. In fact, the court concludes that it was the intent of Congress to leave intact such well-established union practices and procedures."

As we read the law, and as the Fritsch opinion and cases cited therein indicate, the test of legality is the reasonableness of the provision in all the circumstances and the factual justification for the structure embodied in the union constitution.

In any event the merits of this point are not before the Court on the present appeal and there is neither factual record nor district court decision to review. That is precisely our complaint. For although the issue of the validity of this constitutionally prescribed structure of union government was squarely presented, the district court did not decide it. At the same time, however, the Court below did order a new 1976 election to be supervised by the Secretary.

Although not reflected in the record, the Secretary's representatives have advised the union that as part of their "supervisory" administration of the new election, they intend to invalidate these constitutional provisions and to require that the Offshore Division elect separate executive and fiscal officers by separate vote.

This leaves the union in a dilemma that directly contravenes the intent and terms of the election provisions of the statute. If the Secretary's representatives follow their announced course, the Secretary on his own will have invalidated important provisions of the union Constitution. He will have done this administratively, without the support of any judicial ruling, and his unilateral administrative action will determine the nature and effect of the election being "supervised" by him.

The Union, for its part, will have no means to effectively challenge the Secretary's determination. At most the IOMM&P could complain to the District Court, but it is by no means clear that the court will undertake to grant pre-election review of each decision made by the Secretary in the course of his supervisory duties. If it did, then its procedures would be summary and its decision would probably be considered interlocutory and non-appealable. The only final appealable order would be the final certification of the results of the election. By then, however, the new officers, presumably operating under the structure decreed by the Secretary, would already be functioning.

None of this can be squared with the statutory scheme. The Act contemplates a court action by the Secretary if he believes election procedures to be violative of the Act. The statute provides for a trial of the issues, after usual discovery opportunities, and a trial can be avoided only if the standards of summary judgment are met, as in any plenary federal civil action. Not until final judgment are the election results to be disturbed, and that judgment is immediately appealable. It is the court's decision that establishes the guidelines as to which challenged union rules and procedures are valid and which are invalid. Contrast this with an administrative "supervisory" invalidation of the basic governmental structure embodied in a union Constitution.

We readily acknowledge that not every alleged election taint need be ruled upon by a district court. If several pieces of campaign literature are challenged or if the ballot count is attacked, it is enough to find at least some material taint sufficient to change the result. The reason why a court need not pass upon other challenges of this nature is that it can be assumed that the same piece of literature will not again be distributed, the same ballot markings and ballot challenges will not repeat themselves, and the same ballot count will not recur, particularly in a supervised election.

Where, however, the challenge relates to the validity of a union constitutional provision, the court must pass on it, for the same issue will necessarily arise in the next election. And nothing in the Secretary's supervision will prevent its recurrence.

The district court may not relinquish the determination of claimed infirmities in a union constitution to the "supervisory" discretion of the Secretary. The statute casts the responsibility for such decisions on the courts, not the Secretary of Labor. By failing to decide this issue and allowing the Secretary, even for an interim period before ultimate judicial review, to effectively amend and restructure the union Constitution, the court below committed reversible error.

CONCLUSION

For the reasons stated, the Judgment and Order below should be vacated and the case dismissed. If the Court determines that there are insufficient reasons to dismiss the case, the Judgment and Order should be vacated and the case remanded for trial. Or, if the Court determines that despite all of the reasons stated, a supervised election is still necessary, the

Judgment and Order below shall be amended to provide that the Secretary shall supervise the next regular triennial election commencing June 1977.

Dated: May 21, 1976
New York, N.Y.

Respectfully submitted,

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76-6076

To be argued by
DENNISON YOUNG, JR.

United States Court of Appeals
FOR THE SECOND CIRCUIT
Docket No. 76-6076

W. J. USERY, Secretary of Labor, United States Department of Labor,
Plaintiff-Appellee,

—against—

INTERNATIONAL ORGANIZATION OF MASTERS MATES AND PILOTS, INTERNATIONAL MARITIME DIVISION, ILA, AFL-CIO,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF ON BEHALF OF APPELLEE W. J. USERY, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR

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United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-6076

W. J. Usery, Secretary of Labor, United States
Department of Labor,
Plaintiff-Appellee,

—against—

International Organization of Masters, Mates and
Pilots, International Maritime Division, ILA,
AFL-CIO,
Defendant-Appellant.

BRIEF ON BEHALF OF APPELLEE W. J. USERY, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR

Preliminary Statement

Defendant-appellant International Organization of Masters, Mates and Pilots, International Maritime Division, ILA, AFL-CIO ("IOMM&P" or "union") appeals from a Final Judgment and Order of the Honorable Constance Baker Motley entered in the United States District Court for the Southern District of New York on April 15, 1976, granting judgment to plaintiff-appellee W. J. Usery, Secretary of Labor, United States Department of Labor (the "Secretary") declaring the 1971 election of IOMM&P's International and Offshore Division officers void and ordering that a new election of officers be conducted under the supervision of the Secretary by the end of 1976. The judgment was entered April 15, 1976 after Judge Motley in a written decision dated March 17, 1976 granted summary judgment to the Secretary, holding that the union had violated Section 401 of The Labor Management Reporting and Disclosure Act (the "Act"), 29 U.S.C. § 481, and that a new election under the Secretary's supervision was required pursuant to Section 402 of the Act, 29 U.S.C. § 482.*

Questions Presented

1. Whether the District Court was correct in concluding that the union's Newsletter was campaign literature prepared and distributed in violation of Section 481?

2. Whether the District Court correctly held that the union's election of officers conducted in 1974 could not moot or in any other way affect this action?

3. Whether it was appropriate for the District Court to defer ruling on the legality of those provisions in the IOMM&P Constitution and Offshore Division By-Laws requiring that the union's three International officers automatically become the three top officers of the union's Offshore Division without a separate election for said positions among the members of the Offshore Division? In the alternative does this scheme violate the provisions of Section 481?

4. Whether the District Court properly ordered the new election under the Secretary's supervision to be completed by December 31, 1976 rather than delaying it for another year so that it could be conducted during the union's next regularly scheduled election as the union had requested?

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* Hereinafter all references to the Act will be cited to the United States Code; e.g. Section 401 of the Act will be referred to as Section 481, etc.

Statement of the Case

In his complaint the Secretary alleged that the IOMM&P committed various violations of Section 481 during the course of its 1971 election of officers which required that the Court void that election and order a new one subject to the Secretary's supervision.

The Secretary, after extensive discovery, moved for summary judgment with regard to the following five violations alleged in his complaint:

1. The preparation and mailing by the IOMM&P of the "60th Convention Newsletter on the Resolution of Affiliation of the IOMM&P with the ILA" (the "Newsletter") using union funds, mailing lists and other resources violated Sections 481(c) and (g);

2. The preparation and mailing by the IOMM&P of another document entitled "All Constitutional Amendments and Resolution of the 60th Convention Ratified—Affiliation of IOMM&P as the International Maritime Division of the ILA (AFL-CIO) Affirmed" (the "Eleven Pledges" document) using union funds, mailing lists and other resources violated Sections 481(c) and (g);

3. The IOMM&P's prohibition of certain members of its Offshore Division's Atlantic and Gulf areas from participating in any way during the union's 1971 election in the selection of Offshore Division Vice Presidents for the Atlantic and Gulf areas violated Section 481(e);

4. The IOMM&P's failure to mail election ballots within 30 days after the close of nominations, which was contrary to its own constitution's dictates, violated Section 481(e); and

5. The IOMM&P's failure to provide candidates with a certified list of Local 88 (now Port of New York) members, which was contrary to the Offshore Division By-Law requirements, violated Section 481(e).

The IOMM&P opposed the Secretary's motion, cross-moving for summary judgment on the third issue. It also moved for summary judgment in its own right, primarily arguing that the case was moot because an election had been conducted by the union in 1974, even though it was not supervised by the Secretary. The IOMM&P moved in addition for partial summary judgment seeking to dismiss certain of the Section 481 violations alleged by the Secretary but which were not part of his summary judgment motion. Consideration of the IOMM&P's motions was deferred by the District Court pending determination of the Secretary's motion (A. 3152).*

The District Court granted the Secretary's motion and declared the IOMM&P's motions moot (Opinion, A. 2864-2865). The Court held that the union's Newsletter constituted campaign literature prepared and distributed in violation of Section 481 which "may have affected" the outcome of the elections in question;** accordingly said elections were voided and a new election ordered. Recognizing that this violation would require a new election the Court did "not feel it necessary to consider the additional four violations alleged by the Secretary . . . since the newsletter violation upon which the motion is hereby granted, comprehends all of the contests in the election which are involved in the additional alleged violations, and any decision regarding such violations would not affect the ultimate disposition of the case." (Opinion, A. 2888-2889).

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* Hereinafter, the Joint Appendix will be referred to by the letter "A" followed by the appropriate page number.

** Section 482 requires a finding that certain Section 481 violations "may have affected" the outcome of the questioned election. Once the violation is proved, however, the burden shifts to the union to show that the violation "did not affect the outcome of the election." See p. 18, *infra*.

The union raises four issues on appeal.* With respect to each there are no material facts genuinely in dispute. All that is called for is legal interpretation.

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* In reaching its conclusion the District Court also decided several preliminary issues which the IOMM&P does not challenge herein. First, the District Court held that union members had properly and timely filed complaints concerning alleged 1971 election violations with the Secretary pursuant to the requirements of Section 482(a) thereby triggering the Secretary's action. (Opinion, A. 2865-2868). The IOMM&P initially questioned the timeliness of the filings with the Secretary, but that issue has now been abandoned on appeal. (Appellant's Brief, p. 16.)

Second, the District Court determined that summary judgment was appropriate in this case since there was no genuine issue of material fact either as to the commission of a Section 481 violation or as to the inability of the union to produce evidence sufficient to overcome the presumption that such violation may have influenced the results of the election at issue. (Opinion A. 2877-2878). This determination also has never been questioned by the union and is specifically not raised on appeal. (Appellant's Brief, p. 16).

Third, the District Court articulated the standards of proof necessary for a union to defeat the Secretary's action in a case such as this. Simply stated the Secretary is obliged under Section 482(c) of the Act to prove the existence of a Section 481 violation and that such violation "may have affected" the outcome of the election in question. Once the violation is proved, however, a *prima facie* case is established that the violation "may have affected" the election and the defendant union must then prove that the violation did not affect the outcome of the election.

In addition the District Court found that the Secretary had proved that the preparation and distribution of the Newsletter by the union was a Section 481 violation and, inasmuch as there was no tangible evidence which the union could possibly introduce to prove that such violation did not affect the outcome of the election, the Secretary had successfully shown that said violation "may have affected" the outcome of the election. While the union challenges the District Court's finding that the preparation and distribution of the Newsletter constituted a violation of Section 481, it does not contest the District Court's conclusion that such violation, assuming it was proved, was sufficient to satisfy the "may have affected" requirement.

First, as noted the District Court found that the Newsletter constituted campaign literature prepared and distributed in violation of Section 481. This finding was based on the Court's evaluation of the Newsletter and the context in which it was distributed as well as on a determination that the IOMM&P was bound to this conclusion by an identical finding on the identical issue as a party to a previous proceeding before another District Judge in the Southern District of New York (Croake, *J.*). (Opinion, A. 2882-2883). The union now asks this Court to interpret the Newsletter and the context in which it was distributed as not being campaign literature, and that it also find that the union is not bound by the previous decision to the same effect.

Second, Judge Motley held that the union's intervening unsupervised 1974 election of officers did not moot the Secretary's action. (Opinion, A. 2869-2872). The union challenges this conclusion.

Third, the union contends that the District Court erred in refusing to decide at this juncture the legality of a scheme set forth in the union's Constitution and its Offshore Division's By-Laws, which requires the executive officers of the Offshore Division to hold office without separate nominations and elections for those positions among the members of the Offshore Division.

Finally, the union argues that the District Court should not have compelled the IOMM&P to complete a new supervised election by December 31, 1976 rather than permitting such election to coincide with the next regularly scheduled election in late 1977.

As will be demonstrated below, all of these arguments are without merit. In addition, the Secretary submits, and the union does not contest, that there were no material facts genuinely in dispute with respect to the other alleged violations on which the Secretary moved for summary judgment, but on which the District Court did not pass.

Thus if this Court agrees that the instant action has not been mooted or otherwise been affected by the 1974 election, the Government contends that this Court should review those violations to support the District Court's holding in the event the Newsletter is held not to constitute campaign literature.

Statement of Facts

The Structure of the Union in 1971

The IOMM&P is a national union consisting of approximately 10,500 ship deck officers, including ship captains and ship pilots, with officers in major ports throughout the United States. (¶¶ 1, 2 and 3, Pltf.'s 9(g) Stmt., A. 1261-1262).* As a labor organization it is required to adhere to the provisions of Section 481 (¶¶ 4 and 5, Pltf.'s 9(g) Stmt., A. 1262).

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* We cite to the statement of facts submitted below by the Secretary together with his summary judgment motion pursuant to Rule 9(g) of the General Rules of the Southern District of New York (A. 1261-1287) principally to eliminate unnecessary and redundant referencing to other parts of the lengthy Joint Appendix. Essentially these factual statements were not—and, clearly, are not now—contested and were otherwise supported by statements made by the union in its answer or in response to different phases of discovery or by the union's own documentary material, much of which was annexed as exhibits to the Rule 9(g) Statement itself. Wherever appropriate in the Secretary's Rule 9(g) Statement reference was made below the factual statements therein to material which supports the statements set forth, all of which has been included in the Joint Appendix should the Court find reference to it necessary. A description of that material is contained on the first page of the 9(g) Statement (A. 1261) and

[Footnote continued on following page]

On October 1, 1970 the IOMM&P's newly adopted Constitution became effective (¶ 7, Pltf's 9(g) Stmt., A. 1262). This Constitution reorganized the IOMM&P into Divisions. (IOMM&P Constitution,* Art. I., Sec. 2, A. 1296).

The Offshore Division is the largest division and is comprised of former offshore locals, now denominated as Ports. (¶ 9, Pltf's 9(g) Stmt., A. 1262). The members of the Offshore Division are seagoing ships' officers, sailing aboard Atlantic, Gulf and West Coast ocean going vessels (¶ 11, Pltf.'s 9(g) Stmt., A. 1263). In 1971 there were approximately 8205 members of the Offshore Division. (¶ 10, Pltf.'s 9(g) Stmt., A. 1263). The Offshore Division By-Laws effective in 1971 are annexed to the Secretary's 9(g) Statement as Exhibit B. (¶¶ 12 and 21, Pltf.'s 9(g) Stmt., A. 1263-1264, and 1344).

The Inland Division is composed of inland locals and consists of ships' officers assigned to vessels sailing in inland rivers, bays and sounds of the United States. (¶ 16, Pltf.'s 9(g), Stmt., A. 1263). There were approximately 1500 members of the Inland Division in addition to approximately 600 from Inland Local 47

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an index to the exhibits may be found at page A. 1288. To dispel any question regarding those few instances where the union queried the accuracy of the statements made by the Secretary, the Secretary prepared an "Analysis of Defendant's Denials" which was included as Exhibit A to the appendix accompanying the Secretary's Reply Memorandum below. This analysis appears in the Joint Appendix on page A. 1987 through A. 1996 and demonstrates the support for the factual statements made or shows the irrelevancies of the denials set forth. It is clear, however, that the union is not contesting any of the factual statements made and accordingly we believe it would be unnecessary, and perhaps more confusing to the Court than helpful, to cite excessively to the various parts of the Joint Appendix.

* The IOMM&P Constitution was annexed to the Secretary's Rule 9(g) Statement as Exhibit A. (A. 1291).

which Local's association with the IOMM&P was in question and whose members did not vote for International officers. (¶¶ 15 and 17, Pltf.'s 9(g), Stmt., A. 1263).

A third division, the Pilots Division, consisted of approximately 550 members employed aboard American and foreign flag oceangoing vessels as ships' pilots (¶ 18, Pltf.'s 9(g), Stmt., A. 1263).

The elections the Secretary contested herein are those of the three International Officers—the International President, International Executive Vice-President and International Secretary-Treasurer; and those of the Offshore Division's officers.

The 1971 Election

The IOMM&P's 1971 election of officers was conducted pursuant to the provisions of the newly adopted International Constitution which became effective October 1, 1970. (¶¶ 7 and 20, Pltf.'s 9(g), Stmt., A. 1262 and 1264). The elections for the Offshore Division were conducted pursuant to the Offshore Division's By-laws, also effective October 1, 1970, as well as pursuant to the International Constitution. (¶¶ 12 and 21, Pltf.'s 9 (g), Stmt., A. 1263 and 1264).

The Convention

At the 60th convention held in Galveston, Texas, July 26, 1971 to July 28, 1971, nominations were accepted for the International offices pursuant to Article V, Section 5 of the IOMM&P Constitution. (¶ 22, Pltf.'s 9(g), Stmt., A. 1264 and 1311). An International Ballot Committee comprised of five delegates was nominated and elected. (¶ 23, Pltf.'s 9(g), Stmt., A. 1264).

International President O'Callaghan, International Executive Vice-President Caldwell and International Secretary-Treasurer Lowen were nominated for re-election to their respective offices. The challengers included Lloyd W. Sheldon and Robert Boyle Wright for International President; George Vance and Amos E. Koonce for International Vice-President; and Charles O. Norstrand and George H. Balser for International Secretary-Treasurer (¶¶ 39 and 40, Pltf.'s 9(g), Stmt., A. 1266-1267).

Nominations for offices of the Offshore Division were conducted at the division level and not at the International Convention (¶ 25, Pltf.'s 9(g), Stmt., A. 1264) but also were completed by July 28, 1971 (¶¶ 122 and 123, Pltf.'s 9(g), Stmt., A. 1282). The elections for all offices of the Offshore Division were conducted simultaneously with the election for International Officers. (¶ 26, Pltf.'s 9(g), Stmt., A. 1264-1265).*

Aside from the election the other major piece of business at the 1971 convention was a proposed union-wide referendum on the question of whether the IOMM&P should affiliate with the International Longshoremen's Association ("ILA"). (Appellant's Brief, pp. 9, 19). Incumbent International President O'Callaghan was a strong proponent of affiliation (Appellant's Brief, p. 9; p. 21, *infra;* see also statement under O'Callaghan name on every ballot, A. 1359-1385) as was Teddy Gleason, the President of the ILA (Appellant's Brief, p. 9). Challenger Sheldon was an equally strong opponent of affiliation and was the only delegate at the convention to vote against affiliation. (A. 1786 and 1999; Appellant's Brief, pp. 9-10). Remarks made by Gleason and others at the convention were excerpted, reprinted and circulated to the membership in the union's Newsletter. These remarks were laudatory of incumbent O'Callaghan but vilified challenger Sheldon and those associated with him. (See *infra*, pp. 13, 14). Indeed, they not only took issue with Sheldon's position on affiliation but also attacked his motives and integrity.

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* The Offshore Division By-Laws, Art. XIX, Sec. 2(a), required that nominations be held in June 1971 and that the election be conducted at the same time as the election for International officers. (A. 1356).

A resolution on affiliation passed the convention and a referendum was presented to the membership. The referendum was conducted over a three month period from August 20 to November 23, 1971 (¶ 131, Pltf.'s 9(g), Stmt., A. 1283) which period overlapped with the balloting for union officers which ran from September 21 to December 22, 1971. (¶¶ 29 and 30, Pltf.'s 9(g), Stmt., A. 1265).*

Mechanics of the Election

The American Arbitration Association ("AAA") was selected by IOMM&P as the impartial balloting agency to conduct the election, pursuant to Article V, Section 3 of the IOMM&P Constitution and Article V, Section 3 of the Offshore Division By-Laws. The AAA in conjunction with the union's International Ballot Committee handled the mechanics of the election including the preparation, distribution, and counting of the ballots. (¶ 28, Pltf.'s 9(g), Stmt., A. 1265). Additionaly, the AAA served as the central location for the inspection of membership lists and the distribution of campaign literature. (¶ 28, Pltf.'s 9(g), Stmt., A. 1265).

On the front side of ballots sent to Offshore Division members the candidates for International office were presented; on the reverse side candidates for Offshore Division offices were listed. (See Exhs. D1-D9, Pltf.'s 9(g) Stmt., A. 1359-1383).* Ballots received no later than December 21, 1971 (¶ 31, Pltf.'s 9 (g) Stmt., A. 1265), the last day of the three month voting period, were counted on December 22, 1971. (¶¶ 60 and 61, Pltf.'s 9(g), Stmt., A. 1271). On January 12, 1972 the AAA certified the election results. (See ¶ 62 and Exhibit M, Pltf.'s 9(g), Stmt., A. 1271 and 1413).

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* The reason for the lengthy voting period is because the voters are so frequently at sea that one election date is not feasible. Also the voters are spread out all over the country so that a single place for personal voting is impossible.

The O'Callaghan Team-Victors

The incumbents O'Callaghan, Caldwell and Lowen, won re-election to the three International offices. (See ¶¶ 60 and 69, Pltf.'s 9(g) Stmt. A. 1271-1272. They, together with incumbent officers in the Offshore Division Port offices, ran as part of the "O'Callaghan team" (¶¶ 56, 57 and 58, Pltf.'s 9(g), Stmt., A. 1269-1270).** Those on the O'Callaghan team are all noted appropriately on Exhibit E annexed to the Secretary's 9(g) Stmt. (A. 1386). All *** those on the O'Callaghan team at the December 22, 1971 counting of the ballots, either won outright or won a sufficient number of votes to enter a run-off. (See ¶¶ 60 and 69, Exhs. M and P, Pltf.'s 9(g) Stmt. (A. 1271, 1272, 1413 and 1430).

Under the IOMM&P Constitution and the Offshore Division By-Laws, the International President, International Executive Vice President and the International

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* Members of the Pilots Division voted for International Officers as well as for their own officers. (See sample Pilots' ballot, Exh. F-2, Pltf.'s 9(g) Stmt. A. 1393-1395. Members of the Inland Division only voted for International officers (Exh. F-1, Pltf.'s 9(g) Stmt. A. 1391-1392.

** There were a number of elections in which no incumbents ran. They were, nevertheless, supported by, and accordingly were part of, the O'Callaghan team. (See ¶ 58 (footnote), Pltf.'s 9(g) Stmt., A. 1269-1270).

*** With the exception of one minor candidate. (See ¶ 58 (footnote), Pltf.'s 9(g) Stmt., A. 1269-1270).

Secretary Treasurer automatically become without separate elections the Executive Officer, Assistant Executive Officer and Financial Officer of the Offshore Division, respectively. See Art. IX, Sec. 8, IOMM&P Constitution, A. 1331-1332; Art. V Sec. 1, Offshore Division By-Laws, A. 1348). There is no separate election for those Offshore Division positions among the members of that Division despite the fact that those officers have significant responsibilties and perform significant duties for the Offshore Division alone (see Offshore Division By-Laws, Art. VI, Sec. 1; Art. VI, Sec. 2; and Art. VI, Sec. 3; A. 1348-1349).

Thus, as a result of their election to their International offices, O'Callaghan, Caldwell and Lowell became, respectively, the Executive Officer, Assistant Executive Officer and Financial Officer of the Offshore Division.

The Newsletter

The Newsletter containing Gleason's remarks, which praised O'Callaghan and vilified Sheldon, was mailed to each member by the IOMM&P on August 19, 1971 (¶ 82 and Exh. BB, Rule 9(g) Stmt., A. 1274). The Newsletter's preparation, duplication and distribution were paid for with more than $3,000 received by the IOMM&P by way of dues, assessments or similar levy (¶ 83, Rule 9(g), Stmt., A. 1275; Opinion, A. 2879). It was sent to approximately 10,400 members in mailing using addresses on file at the International headquarters on a computerized list. (¶ 85, Rule 9(g), Stmt., A. 1275).

The Secretary contended and Judge Motley so found (Opinion, A. 2882) that the Newsletter was election campaign literature prepared and distributed in violation of Section 481.

The Action Before Judge Croake

With respect to this Newsletter, on September 16, 1971, just before the election ballots were mailed, Sheldon and two other candidates, brought an action against O'Callaghan, Caldwell, and Lowen and the IOMM&P. (¶ 86, Pltf.'s 9 (g) Stmt. A 1275). They alleged, *inter alia*, that the Newsletter was campaign literature prepared and distributed at the expense of the defendant IOMM&P and that this denied them the right to have campaign literature equally distributed in violation of 29 U.S.C. § 481(c). (¶ 87, Pltf.'s 9(g) Stmt., (A. 1275). See *Sheldon* v. *O'Callaghan*, 335 F. Supp. 325, 326 (S.D.N.Y., 1971)).

In a decision dated October 18, 1971, Judge Croake found the "'Newsletter' containing electioneering for the incumbent candidate, *ad hominem* attacks upon an opposition candidate, coupled with the timing of the distribution, constitute[d] campaign literature for defendant O'Callaghan, distributed at the expense of defendant labor organization" *Sheldon* v. *O'Callaghan*, 335 F. Supp. at 327.*

On November 4, 1971, Judge Croake ordered the IOMM&P to publish and distribute literature submitted by the plaintiffs in that action in a manner similar to the publication and distribution given the Newsletter.

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* In his opinion, footnotes 1 and 2, Judge Croake cited various passages of campaign oratory benefiting O'Callaghan and his slate. *Sheldon* v. *O'Callaghan*, 335 F. Supp. at 326-327. We quote just one such passage:

> I trust O'Callaghan, and if O'Callaghan wasn't the top man here I'd think twice before saying I want the affiliation to go through with the Masters, Mates and Pilots. . . . O'Callaghan I trust. ("Newsletter", p. 5, A. 1459).

The full Newsletter is found in the Joint Appendix at A. 1455-1462.

with equal force and with equal treatment as to the expense of such distribution. (¶ 89 and Exh. DD, Pltf.'s 9(g) Stmt., A. 1276 and 1468-1469). However, Judge Croake denied the plaintiffs' motion to restrain the mailing of ballots, which plaintiffs had sought in order to ensure that their material would be received by the members before they cast their ballots. Judge Croake denied this relief in view of the availability of post-election remedies to plaintiffs with the Secretary of Labor, those very remedies which the Secretary seeks herein. 335 F. Supp. at 328-29.

Pursuant to Judge Croake's November 4, 1971 order, plaintiff Sheldon submitted his literature to the AAA sometime shortly before November 9, 1971. (¶ 91 Rule 9(g) Stmt., A. 1277). The AAA mailed Sheldon's literature shortly after November 9, 1971. (¶ 92 Rule 9(g) Stmt., A. 1277). By then many of the election ballots had been returned. (¶ 93, Pltf.'s 9(g) Stmt., A. 1277).

In the instant case the District Court concluded that Judge Croake's finding, that the Newsletter was campaign literature prepared and distributed in violation of Section 481, collaterally estopped the IOMM&P from asserting otherwise, and that that finding alone was sufficient to establish a *prima facie* case that said violation "may have affected the outcome of the election." (Opinion, A. 2882).

The 1974 Union Election

In late 1974 the IOMM&P conducted its regularly scheduled election of officers, unsupervised by the Secretary of Labor. (See Appellant's Brief, p. 13).

In that election International President O'Callaghan and International Vice-President Caldwell were forced into a run-off, neither having received the necessary 40%

plurality, and both ultimately were defeated.* Similarly, a number of others associated with the O'Callaghan team lost although incumbent International Secretary-Treasurer Lowen and approximately fifty percent of the O'Callaghan slate won. (See Exhs. I and J annexed to the appendix submitted with the Secretary's Reply Memorandum in the District Court, A. 2062 and 2075; p. 32 n.1, *infra*).

The Case Before Judge Knapp

In 1970 certain members of the IOMM&P brought suit against the union claiming that the 1970 Constitution had been adopted improperly in that dissident views on the adoption of that Constitution had not been properly disseminated by the union officers. The Second Circuit in a decision dated June 13, 1974 reversed the initial decision of United States District Judge Whitman Knapp dismissing the complaint and remanded for further evidence to be taken. See *Sheldon* v. *O'Callaghan*, 497 F.2d 1276 (2d Cir. 1974), *cert. denied*, 419 U.S. 1090 (1974).**

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* O'Callaghan was defeated by Captain Scavo and Caldwell was defeated by Captain Johnson. During the run-off stage, when victory was not yet assured, Captains Scavo and Johnson, together with a defeated candidate for International Secretary-Treasurer, Captain Brown, (the "Scavo Group") moved to intervene or in the alternative to file an amicus curiae brief. (A. 3154). They were permitted to file an amicus brief only. (A. 3153). The Scavo group urged at that time that the action be placed in suspense until the run-off election was complete and a determination made as to the fairness of the 1974 election. To that extent they agreed with the IOMM&P position that the 1974 election could moot the 1971 case. They suggested, however, that such a determination of fairness would be unnecessary if Scavo and Johnson won but then continued to argue that if they lost O'Callaghan should have the burden of proving the election was fair. If O'Callaghan failed to meet that burden, they went on, then the Secretary's case should be resumed.

** This case should not be confused with the case styled *Sheldon* v. *O'Callaghan* heard by Judge Croake wherein Judge Croake found the Newsletter to be campaign literature distributed in favor of O'Callaghan and his slate.

On July 2, 1975 Judge Knapp heard additional evidence and on August 5, 1975 he rendered judgment for plaintiffs, finding plaintiffs had not been given the opportunity to disseminate their views. (A. 3060). The relief provided by Judge Knapp did not void the 1970 Constitution under which the 1971 election of officers was held. Rather, a lengthy procedure was established whereby the union is to take action to allow the membership to reconsider and vote upon the 1970 Constitution. Essentially the union has one year from the conclusion of appellate procedures to conduct a referendum to approve or disapprove the 1970 Constitution; should the membership disapprove it, then within that one year period the union is to propose a new constitution and put it to a referendum as well; and if that fails the constitution in effect prior to the adoption of the 1970 Constitution becomes effective. On February 26, 1976 Judge Knapp's judgment was affirmed by the Second Circuit.

The significance of this case lies only in the fact that as a result of its holding the union suggests that the constitution "could" be discarded in 1977 and that an election would then have been compelled unnecessarily. (Appellants' Brief, pp. 32-33). Judge Motley found the possibility of the 1970 Constitution being discarded and yet another election mandated "far too tenuous to prevent this court from remedying the violations which it finds to have occurred in the matter duly before it." (Opinion, n.2, A. 2890).

ARGUMENT

POINT I

The "Newsletter" was campaign material distributed in violation of Section 481 of the Act which violation may have affected the outcome of the 1971 election.

A. The District Court correctly found that the Newsletter may have affected the outcome of the 1971 election

Section 482(c) sets forth the standards a court is to apply in determining whether to invoke the supervised election remedy as follows:

> "(c) If, upon a preponderance of the evidence after a trial upon the merits, the court finds—
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> * * * * *
>
> (2) that the violation of Section 481 [401 of the Act] of this title may have affected the outcome of an election,
>
> the court shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary . . ."

In *Wirtz* v. *Hotel Motel & Club Employees U., Local 6*, 391 U.S. 492, 506-507 (1968) the Supreme Court held that a proved violation of Section 481 [401 of the Act] creates a *prima facie* case that the violation "may have affected the outcome" of the election and that the only way a defendant union may overcome such a *prima facie* case is to prove with tangible evidence that the violation did not affect the outcome of the election. (Opinion, A. 2872-2876).

It is equally well settled that there will be certain situations where it will be impossible for a union to prove that the election was not affected by the violation at all. See *Hodgson* v. *Liquor Salesman's Union, Local No. 2*, 331 F. Supp. 1369 (S.D.N.Y.), *aff'd*, 444 F.2d 1344 (2d Cir. 1971);[*] *Brennan* v. *Local U. No. 639, Int. Bro. of Teamsters, Etc.*, 494 F.2d 1092 (D.C. Cir. 1974); *Brennan* v. *Sindicato Empleados de Equipo Pesado, Eetc.*, 370 F. Supp. 872, 879 (D.P.R. 1974); *Shultz* v. *Radio Officers U. of United Telegraph Wkrs.*, 344 F. Supp. 58, 64 (S.D.N.Y. 1972); *Wirtz* v. *American Guild of Variety Artists*, 267 F. Supp. 527 (S.D.N.Y. 1967).

As Judge Motley recognized the instant case falls in this category. There is no tangible evidence which the union could offer which would show that the Newsletter did not have some impact on those who voted in the election. No facts are alleged in the material submitted by the union which, if accepted as true, would support a finding that the Newsletter had no effect on the election's outcome. On the contrary, the undisputed facts clearly support the District Court's finding that the preparation and distribution of the Newsletter at union expense may have affected each vote in the election. (Opinion, A. 2885-2888).

Nor can it be argued that the mailing of the Sheldon material on November 9, 1971 purged the taint of the

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[*] There a union publication found to be campaign material prepared in violation of Section 481(g), a violation similar to the one the Court is called upon to examine in the instant case, was circulated to the members just prior to the date of the election. Applying the logic of the *Hotel, Motel* case, *supra*, the Court held that in a case such as this there could be no tangible evidence presented to overcome the presumption that the violation may have affected the votes of the members and therefore the outcome of the election.

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Newsletter. By the time Sheldon's literature was mailed out, over half the ballots — 3000 to 4000 — had been returned to the AAA. (¶ 93, Pltf.'s 9(g) Stmt., A. 1277). As the District Court found, these returned ballots were more than sufficient to have possibly affected the outcome of all the International and Offshore Division contests. (Opinion, A. 2886-2887). In addition, Sheldon was associated with a number of other candidates in the subject election. (¶ 59, Pltf.'s 9(g) Stmt., A. 1270). There were many — such as third and fourth parties in a race — who in any event could claim no benefit from Sheldon's material and were not covered by Judge Croake's order to the IOMM&P to allow distribution at IOMM&P expense. Thus, where these additional candidates existed, the mere preparation and distribution of the Newsletter would be enough to have possibly affected the outcome of those elections. (Opinion, A. 2886).

The union does not and can not challenge the District Court's finding that the Newsletter may have affected the outcome of the election. Rather, the union limits its attack to Judge Motley's holding that the Newsletter was campaign literature. In so doing, the union asks this Court to ignore the contents of the Newsletter and the undisputed facts regarding the circumstances surrounding its distribution and to overlook the doctrine of collateral estoppel.

B. The Newsletter was campaign literature

On August 19, 1971 the IOMM&P mailed the Newsletter, which was paid for with union funds, to all of its members. As we have noted in the statement of facts, the Newsletter's ostensible purpose was to support IOMM&P affiliation with the ILA. However, it went much further. It praised O'Callaghan for supporting affiliation. Indeed it suggested that for affiliation to work O'Callaghan would have to be at the head of the union (see pp. 13, 14, *supra*). It also brutally attacked those who opposed affiliation. While it may not have mentioned the opponents by name, it was well known that O'Callaghan's chief challenger for President, Sheldon, was as vigorously opposed to affiliation as O'Callaghan was for it.

Both O'Callaghan and Sheldon and their respective [illegible] affiliation a principal issue of the election campaign. O'Callaghan boldly linked this issue to his campaign right on the face of the secret ballot for the election of officers. Thereon as the last reminder before voting in the last line of his statement under his name he says: "I request that the membership vote in favor of affiliation with the ILA." (A. 1360). Additionally his campaign literature is peppered with reminders that O'Callaghan supported affiliation. (A. 1400, 1404, 1407-1408).* Conversely, Sheldon was the one delegate at the convention to vote against affiliation (A. 1786) and his literature also focused on affiliation (¶ 59 and Exh. MM, Pltf.'s 9(g) Stmt., A. 1270, 1562-1571).

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* Furthermore, once the referendum on affiliation was over, the union announced the positive results in another document. This document entitled "All Constitutional Amendments and Resolution of the 60th Convention Ratified—Affiliation of IOMM&P as the International Maritime Division of the ILA (AFL-CIO) Affirmed!" was mailed on November 26, 1971 in the middle of the election period. The third page of this four page document contained a joint letter from O'Callaghan and Gleason pledging their joint effort in eleven areas thereby reaffirming O'Callaghan as the champion of affiliation. Additionally on the back page, in bold face, was a reminder that December 21, 1971 was the deadline for voting for officers. (¶¶ 103, 104 and 105, Pltf.'s 9(g) Stmt., A. 1279).

This document too, the Secretary alleged was campaign literature prepared and distributed in violation of Sections 481(c) and (g), but Judge Motley did not reach this matter.

In view of the great lengths both candidates went to identify themselves with the affiliation issue, it is no wonder that the two District Judges who had the Newsletter before them found it to be campaign literature and summarily rejected the union's contention that it was not campaign literature favorable to O'Callaghan and his slate. The union on this appeal persists in arguing that the Newsletter was not campaign literature, that it was nothing more than a normal union publication on a subject of importance distributed as part of the union's customary business. However, a reading of the document reveals this is not one merely listing the pros and cons on an issue of importance to the union. Rather, it is advocacy literature filled with robust, fighting words attacking the personal character of the opponents of affiliation just as much as, if not more than, their positions on the issue. It was distributed after the candidates and their positions on affiliation, a principal issue in the campaign, were known to the membership.

Given this set of circumstances and the fact that the election was about to take place, the conclusion is inescapable that the Newsletter was a helpful campaign tool for O'Callaghan and his team. Thus, the District Court correctly found that the Newsletter was campaign literature distributed at union expense. The Secretary therefore submits that the union violated Section 481 in the following three ways:

1. By preparing and distributing this campaign literature using union resources, the union violated Section 481(g);

2. By distributing the Newsletter using its lists of members, the union did not "refrain from discriminating in favor of or against any candidate with respect to the use of lists of members" in violation of Section 481(c); and

3. By failing to offer "similar distribution at the request of another bona bide candidate", the union violated Section 481(c) in another respect.[*]

C. The union is collaterally estopped from claiming that the Newsletter is not campaign literature

Although Judge Motley independently concluded that the Newsletter was campaign literature distributed in violation of Section 481 (Opinion, A. 2882)[**] she also ruled that the union was already bound by Judge Croake's earlier identical determinations:

> **"As a party to the action before Judge Croake in which the identical issue—as to whether the Newsletter was campaign material distributed at the expense of the IOMM&P—was litigated in a similar context as the one herein, the IOMM&P is collaterally estopped from asserting any findings contrary to those made by Judge Croake. *Zdanok* v. *Glidden Co.*, 327 F.2d 944, 954-56 (2d Cir. 1964), *cert. denied*, 377 U.S. 934 (1964)." (Opinion, A. 2882).**

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[*] The relief ordered by Judge Croake in his case, if it could even be considered sufficient to have rectified the wrong, came too late. The Newsletter had already taken its toll. As the District Court so aptly put it in *Wirtz* v. *American Guild of Variety Artists;* 267 F. Supp. at 543, similar distribution in the context of Section 481(c) means on the same terms and conditions and that means "at the same time."

[**] The whole document need not be considered campaign material; it is sufficient that the document contain passages which are campaign in character for the whole piece to fall in the campaign material category. See *Wirtz* v. *Independent Workers Union of Florida*, 272 F. Supp. 31 (M.D. Fla. 1967). See also *Hodgson* v. *Liquor Salesmen's Union, Local No. 2*, 334 F. Supp. at 1377, where the District Court noted that the defendant union's Journal in "tone and content" constituted campaign literature.

The union argues, however, that the case before Judge Croake was not "fully litigated" and thus cannot be binding on the union. As it did below, the union suggests this is so because that action only involved a prayer for preliminary relief and because Judge Croake failed to hold an evidentiary hearing. There is no merit to the union's arguments.

The case before Judge Croake did not involve only a prayer for preliminary relief. Final affirmative relief in the form of an order directing the IOMM&P to provide equal distribution of plaintiffs' literature was also sought. *Sheldon* v. *O'Callaghan*, 335 F. Supp. at 326 and 328. In fact, what was granted was such final relief. The requested preliminary injunction seeking a delay in the mailing of the election ballots was denied by Judge Croake on the ground that plaintiffs had not suffered irreparable injury in light of the post-election remedy then still available to set aside the election through the Department of Labor. However, Judge Croake did grant final relief by requiring the union to distribute the campaign literature submitted by plaintiffs. In so doing, the Judge disposed of the entire case, leaving nothing further to determine. As relates to the Newsletter the case was clearly over; the decision was final and the relief was not interlocutory.

In reaching his final decision, Judge Croake had before him all the factual material the union had to offer as to the Newsletter. Indeed, the union offered nothing more to Judge Motley regarding the Newsletter than it did to Judge Croake years ago.[*] In his affidavit submitted to

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[*] Annexed as Exhibits B and C in the Appendix accompanying the Secretary's Reply Memorandum submitted below, the Court will find the affidavit of IOMM&P President O'Callaghan and the IOMM&P Memorandum of Law both of which were submitted to Judge Croake (A. 1997 and 2001).

Judge Croake, O'Callaghan described the context in which the document was mailed and argued, as the union does now, that the Newsletter was not campaign literature, that it only dealt with affiliation.

With this sworn affidavit (which is identical in substance to the affidavits submitted to Judge Motley in the instant case) and the Newsletter before him, Judge Croake had the union's full proof on the question of whether the Newsletter was campaign literature. As O'Callaghan himself said "The document speaks for itself." (Page 3 of his affidavit, A. 1999). And indeed it did. Clearly no hearing was necessary.*

Judge Croake determined the Newsletter "containing electioneering for the incumbent candidate, *ad-hominem* attacks upon an opposition candidate, coupled with the timing of the distribution, constitute[d] campaign literature for defendant O'Callaghan distributed at the expense of the defendant labor organization." at 327-328. He thus reviewed the Newsletter in the context of the affiliation issue as set forth by O'Callaghan himself. Having made his decision that the document was campaign literature, he ordered appropriate relief.

On October 29, 1971 the IOMM&P moved to reargue the case but not in respect to the finding that the Newsletter was campaign material.** Certainly if the union

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* Furthermore in this case there was no need for a hearing on the preliminary injunction inasmuch as a preliminary injunction, at the union's insistence, was denied.

** In its Memorandum in support of its motion to reargue, a copy of which was annexed as Exhibit D to the appendix accompanying the Secretary's Reply Memorandum (A. 2014), the IOMM&P claimed it had had no opportunity to present evidence and that no hearing had been held, but that was with respect to a separate issue dealing with lists of members. There was no such concern with respect to the Newsletter as there seems to be now on this appeal. By endorsement November 15, 1971 Judge Croake actually granted the motion to reargue but adhered to his earlier decision. (Exh. H, Pltf.'s 9(g) Stmt., A. 1556).

had facts which it believed would have changed Judge Croake's determination regarding the Newsletter, it would have offered them at that time. On November 4, 1971 Judge Croake signed an order, *inter alia*, granting plaintiffs the right to have the union distribute literature submitted by plaintiffs. In the preamble of that order the Court noted that it had "filed a Memorandum *setting forth its findings of fact and conclusions of law* . . ." (emphasis added). (Exhibit DD, Pltf.'s 9(g) Stmt., A. 1468).

On December 3, 1971 the IOMM&P filed a notice appealing from the November 4, 1971 Order; on December 8, 1971 it filed a notice appealing from the November 15, 1971 endorsement. (Exh. JJ and KK, Pltf.'s 9(g), Stmt., A. 1557 and 1559). No further action was taken and on July 13, 1972, well after the election was over, the Clerk of the Court of Appeals entered a stipulation voluntarily dismissing the above mentioned appeals. (Exh. LL, Pltf.'s 9(g) Statement, A. 1561). By voluntarily dismissing its appeal, the union waived its right to have this Court review Judge Croake's final determination that the Newsletter was campaign literature. Under the criteria set down in *Zdanok* v. *Glidden Co.*, 327 F.2d 944, 954-56 (2d Cir.), *cert. denied*, 377 U.S. 934 (1964), the union had been given a full and fair opportunity to be heard. The issues determined before Judge Croake did not have to be relitigated before Judge Motley, and she so found.[*]

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[*] **We wish to direct the Court's attention to a comparable situation in connection with two cases in the District Court of the District of Columbia. In *Yablonski* v. *United Mine Workers of America*, 305 F. Supp. 868, 871 and 874 (D.D.C. 1969) the Court found the union used its Journal as a campaign instrument and granted the private plaintiff certain injunctive relief. Then in *Hodgson* v. *United Mine Workers of America*, 344 F. Supp. 17, 23 (D.D.C. 1972), an election case brought by the Secretary, another Judge in the same court found "[b]oth on the grounds of comity and the evidence adduced at trial" the Journal was**

[Footnote continued on following page]

POINT II

The 1974 election is not to be considered in reviewing this action with respect to the 1971 election.

In late 1974 and early 1975 the IOMM&P conducted its regularly scheduled election of officers. The results of that election are not disputed.* International President O'Callaghan and International Vice President Caldwell were forced into a run-off and then lost to Captains Scavo and Johnson, respectively. Incumbent International Secretary-Treasurer Lowen, however, retained his office. In the Offshore Division the O'Callaghan slate won approximately fifty percent of the races (see 2d footnote, p. 32, *infra*).

The union argues that in view of the 1974 election results the instant action should either be dismissed as moot, or that the District Court be instructed to determine whether the effects of the tainted election have been cleansed by the unsupervised 1974 election.

The union's argument has no merit. It ignores the express holding of the Supreme Court in *Wirtz* v. *Glass Bottle Blowers, Local 153*, 389 U.S. 463 (1968) and the holdings of the numerous cases following it. *Wirtz* v. *Hotel, Motel & Club Employees Union, Local 6*, 391 U.S. at 496-499 and n.9 at 500-501; *Wirtz* v. *Local Union No. 125, Laborers' International Union of North America, AFL-CIO*, 389 U.S. 477, 479 (1968); *Brennan* v. *Local 3489, United Steelworkers of Am., AFL-CIO*,

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used as a campaign tool. Here the material facts are established and not in dispute and no trial would have been necessary before Judge Motley even if Judge Croake had not come to the conclusion he did.

* Annexed as Exhibit 1 to the appendix accompanying the Secretary's Reply Memorandum submitted to the District Court is the IOMM&P Election Report for the 1974 Election. (A. 2062-2074).

520 F.2d 516, 518 n.3 (7th Cir. 1975); *Brennan* v. *Silvergate Dist. Lodge No. 50, Int. A. of M.&A.W.*, 503 F.2d 800 (9th Cir. 1974); *Hodgson* v. *Local Union 400, Bakery & Confectionery Workers International Union of America, AFL-CIO*, 491 F.2d 1348, 1349 (9th Cir. 1974); *Brennan* v. *International Union of District 50, Allied and Technical Workers of the United States and Canada*, 499 F.2d 1051, 1057-1058 n.13 (D.C. Cir. 1974); *Hodgson* v. *Local 1299, United Steelworkers of America*, 453 F.2d 565, 576-577 (6th Cir. 1971); *Wirtz* v. *Local Union No. 1622, United Brotherhood of Carpenters and Joiners of America, AFL-CIO*, 285 F. Supp. 455, 463 (N.D. Cal. 1968). As these cases make clear, the 1974 election cannot be considered in any way in connection with the instant case.

In the *Glass Bottle Blowers* case, Mr. Justice Brennan stated the Court's unambiguous holding as follows:

> "*We therefore hold* that when the Secretary of Labor proves the existence of a § 401 violation that may have affected the outcome of a challenged election, the fact that the union has already conducted another unsupervised election does not deprive the Secretary of his *right* to a court order declaring the challenged election void and directing that a new election be conducted under his supervision." (389 U.S. at 475-476). [Emphasis added]

In reaching this result, the Court recognized that the interests of a particular union member in a particular union election must yield to the public's superior interest in assuring that union elections are free and democratic. ". . . Congress emphatically asserted a vital public interest in assuring free and democratic union elections that transcends the narrower interest of the complaining union member." *Glass Bottle Blowers*, *supra* at 475. This has been strongly re-emphasized by the Supreme Court in *Wirtz* v. *Local 125, Laborers' International*

Union of North America, *supra*, at 482-483 and again in *Wirtz* v. *Hotel, Motel & Club Employees Union, Local 6*, *supra*, at 496-497. The Court also noted that the Congress, in enacting Section 482 of the Act, determined that *only* the supervision of the Secretary of Labor could protect the public's interest once a tainted election had been held and the union had failed to remedy the election's abuses prior to the filing of a complaint by a union member pursuant to Section 482(a) of the Act. *Glass Bottle Blowers*, *supra*, at 474-475; see also *Hodgson* v. *Local U. 400, Bakery and Confectionery W.I.U.*, *supra*, at 1351-1352. "[T]he happenstance intervention of an unsupervised election" (*Glass Bottle Blowers*, *supra*, at 474) would not satisfy the statutory scheme of remedying election violations by a *supervised* election.

As Judge Motley recognized in this case:

> "Congress intended to guard against a multiplicity of influences which the results of a tainted election may have on subsequent union activities. In this case, for example, the results of the 1971 election may not only have allowed incumbents to have maintained a personal advantage for the 1974 election, but also may have prevented others from rightfully developing the same benefits of incumbency. Others, too, may have withheld their candidacies in 1974 preferring to await an election that was supervised by the Secretary of Labor. In all respects the day to day decisions of the union leadership may have been different over the last three years had other officers been elected in 1971, and such differences may have led to different results in 1974. Just because incumbents do not win re-election does not mean that the subsequent unsupervised election was not in some way affected by the results of the challenged election. The possible influences on the

> outcome of the 1974 election are incalculable and the only way to guard against them is to have the remedial election supervised by the Secretary. A supervised election guards against much more than just incumbents flaunting their incumbency at the time of the subsequent unsupervised election." (Opinion, A. 2871-2872).

In short only a supervised election will guard against the unfairness of a tainted election from "infecting directly or indirectly" subsequent elections. *Glass Bottle Blowers, supra*, at 474.

If, as the union urges, the fairness of intervening elections were to be considered in Section 482 actions, a union could easily insulate its elections from the Secretary of Labor's supervision. It could do so by delaying the completion of a Section 482 action until after an intervening election were held and then delay an adjudication as to the fairness of that election until after the next election were held. Since this process could go on indefinitely there would be no incentive for incumbent union leadership—whoever it was—to deal seriously with the Department of Labor or complaining union members with regard to remedying election abuses. The Court recognized this danger in *Hodgson* v. *Local Union 400, Bakery & Confectionery W.I.U., supra* and applied the rule of *Glass Bottle Blowers* to a special unsupervised "remedial" election which was held even before the Secretary of Labor commenced a Section 482 action, but after a union member had properly filed a complaint with the Secretary under Section 482(a) of the Act.*

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* In that case the Court rejected a union position that "[t]he uncontested validity of the second [unsupervised] election deprives the Secretary of any grounds to contest the first, for a condition precedent to his bringing an action is an *unremedied* violation," *Hodgson* v. *Local Union 400, Bakery & Confectionery W.I.U., supra*, at 1350.

Furthermore, a review of a subsequent election to determine whether a tainted election has been cured would have to focus on every aspect of the officer selection process, just as the Secretary does when supervising an election. Clearly, such a court review was not envisioned by Congress as evidenced by its restricting review to only those issues raised initially by a member's complaint to the Secretary and then by the Secretary's complaint to the Court. See 29 U.S.C. § 482(a); *Hodgson* v. *Local U. 6799 United Steelworkers of America*, 403 U.S. 333 (1971).

". . . Congress . . . *settled* enforcement authority on the Secretary of Labor to insure that serious violations would not go unremedied and the public interest go unvindicated." *Wirtz* v. *Hotel, Motel & Club Employees Union, Local 6, supra*, at 498.[*] (Emphasis added) Thus, once a violation has been proved that may have affected the outcome of an election it is the Secretary's "right to a court order declaring the challenged election void and directing that a new election be conducted under his supervision." *Glass Bottle Blowers, supra*, at 475-476.

In *Brennan* v. *Local 3489, United Steelworkers of Am., AFL-CIO, supra*, the Seventh Circuit recognized the rule of *Glass Bottle Blowers* was controlling even where an individual who originally complained to the Secretary eventually won the subsequent unsupervised election and the incumbent lost. 520 F.2d at 518 n.3. Thus, the results of a subsequent election, even where the incumbents have lost, are irrelevant as a matter of law.* Accordingly, we submit that the 1974 election does not moot, nor can it be considered in, the instant case.**

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[*] In that case the Supreme Court was asked to review the reasonableness of a by-law provision restricting the number of candidates for office to only a very few members. At the District Court the union had urged, among other things, that consideration of the questioned by-law provision was moot because the union had liberalized the by-law amendment. The District Court ruled that the amendment also was unreasonable. While the Supreme Court noted that that part of the District Court's ruling was not before it, it nevertheless stated: "In any event, respondent's argument that the amendment renders this case moot is foreclosed by *Wirtz* v. *Bottle Blowers, supra*, at 475-476. See also *Wirtz* v. *Laborers' Union, supra*, at 479." *Wirtz* v. *Hotel, Motel's Club Employees Union, Local 6, supra*, at 500-501 n.9.

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* See also *Wirtz* v. *Local Union No. 1622, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, supra*, at 463, where the Court noted that "the fact that no complaint was ever made to the Secretary relating to the second election is *irrelevant* since the Secretary has established a violation of the Act respecting the first election and this violation 'may have affected the outcome of the election.' 29 U.S.C. § 482(c)" (emphasis added.) That Court went on to note that it was also irrelevant that the member who lost the first election and instituted the complaint with the Secretary chose not to run in the unsupervised second election.

See also *Brennan* v. *Local 551, United A., A&A Imp. Wkrs. of A. Inc.*, 486 F.2d 6, 8 (7th Cir. 1973).

** Even if the 1974 election could be examined in conjunction with this case, the union's assertion that the "O'Callaghan 'slate' lost two of the three International offices; two of the three Offshore Division Vice President offices; and more than two-thirds of the Offshore Division Port Agents" (Appellant's Brief, p. 3) would be misleading. (In the District Court, it was claimed that a "large majority" of the O'Callaghan slate lost. A. 1806).

While O'Callaghan and Caldwell may have lost, the fact is that incumbent Secretary-Treasurer Lowen did win. In addition, 17 out of 35 of those running for Offshore Division office also won. Compare the 1974 IOMM&P Election Results (Exh. I annexed to the appendix submitted with the Secretary's Reply Memorandum in the District Court, A. 2062) with the list of candidates identified as members of the O'Callaghan slate (the IOMM&P's Election Supplement of the "Master Mate and Pilot" Newspaper identifies slate members by the slogan "For Continued MM&P Progress, Prosperity and Strength Vote for the O'Callaghan Team"—Exh. J annexed to the appendix submitted with the Secretary's Reply Memorandum in the District Court, A. 2075).

POINT III

The scope of the Secretary's supervision of a court ordered election is very broad; it allows the Secretary to set the date of the new election and to direct the union to abandon constitutional provisions which violate the Act.

Once it has been established that a violation of Section 481 may have affected the outcome of an election

> [T]he court shall * declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization. 29 U.S.C. § 482(c).

Congress was committed to making the Secretary's intervention in union elections, once warranted, effective (*Glass Bottle Blowers, supra* at 473) and a supervised election is the *only* way to ensure that the influence of a tainted election may be eliminated. Further, if the Court orders a new supervised election, the order "shall not be stayed pending appeal." 29 U.S.C. §482(d).

The Secretary's supervisory authority is exceptionally broad and his decisions made in connection therewith must be heeded by the union. *Brennan* v. *Local 551, United A, A.&A. Imp. Wkers. of A., Inc.*, 486 F.2d 6 (7th Cir. 1973); *Brennan* v. *Sindicato Empleados de Equipo Pesado, etc.*, 370 F. Supp. 872 (D.P.R. 1974).

In *Brennan* v. *Local 551, United A. A.&A. Imp. Wkers. of A., Inc., supra*, then Circuit Judge Stevens discussed the Secretary's election supervisory powers. In holding that the Secretary, and not the union, could determine the *date* the supervised election was to be conducted, the Court stated:

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* The Supreme Court twice emphasized the word "shall" in the *Glass Bottle Blowers* case (389 U.S. at 468 and 474) and indeed such mandate is clear.

> The order of June 18, 1973, [directing a supervised election] specified a remedy which necessarily involves governmental intervention and supervision of a critical aspect of the union's activities, namely its election process. In order to achieve the purpose of the statute, the Secretary must be afforded a wide range of discretion in discharging his supervisory responsibility. The leadership of the union must respect his authority. At 10.

Included within the Secretary's supervisory authority is the power to determine whether provisions of a union's constitution and/or by-laws then existing are lawful within Section 481 and if not lawful to require the union to discard them in favor of proper substitutes, if appropriate. Section 482(c) specifically states that the new election under the Secretary's supervision is to be conducted "*so far as lawful* and practicable, in conformity with the constitution and bylaws of the labor organization." (emphasis added). Once a supervised election is triggered the intention is to ensure that the new election is conducted fairly and lawfully in all respects, for no other meaning would allow the Secretary's "intervention, once warranted," to be "effective." *Glass Bottle Blowers; supra*, at 473.

The logic of the Sixth Circuit in *Hodgson* v. *Local 1299, United Steelworkers of America*, 453 F.2d 565 (6th Cir. 1971) is relevant. There in reversing a District Court's decision to restrict the Secretary's supervision to the balloting aspect of a new election, the Circuit Court found it advisable "to allow the Secretary to supervise the entire election if he deems it necessary."

Id. at 577. The Circuit Court said: "Not only would this afford maximum protection to the union members but it would also avoid the multiplicity of litigation that could result from incumbent officers violating a different provision of Section 401 [481 of Title 29, U.S.C.] in each new election." *Id.* at 577.

In *Hodgson* v. *Local U 6799 United Steelworkers of America*, 403 U.S. 333 (1971) Mr. Justice White in his dissent* stated that with respect to a court ordered supervised election the Secretary "is under no obligation, indeed forbidden, to follow a provision of the bylaws or constitution that is unlawful." at 343. Mr. Justice White further added, at 344: "[I]f the Secretary finds an invalid bylaw that purports to govern a new election that has been validly ordered on a claim that has been exhausted, as in this case, the Secretary appears to have express grounds in the Act, independent of the complaint-exhaustion requirements, to insist that the new election be conducted in accordance with the law and to insist that a court adjudicate the matter if the union stands by its bylaw povision."

Quoting from Mr. Justice White's opinion and a subsequent majority opinion of the Supreme Court,** the

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* This aspect of Mr. Justice White's dissent was not inconsistent with the majority opinion. The majority opinion merely said the initiation of the Secretary's action must be limited to complants which a complaining member first appealed to his union, unless the particular violation discovered by the Secretary during his investigation was not one that could be discerned by the complaining union member. The majority did not limit the scope of supervision.

** *Trbovich* v. *United Mine Workers*, 404 U.S. 528 (1972) wherein the Court strictly limited rights intervenors had to participate in the Secretary's action to set aside the contested election but in a footnote, noted the limitation was not as stringent with respect to assisting the Secretary fashion a suitable remedy once the court ordered a new supervised election. (at 537 n.8)

Court of Appeals for the District of Columbia in *Brennan* v. *Local Union 639, Int. Bro. of Teamsters, Etc.*, 494 F.2d 1092 (D.C. Cir. 1974), stated the "The [Supreme] Court has clearly distinguished between using a violation as a ground to set aside an election and using a violation with respect to setting the ground rules for a new election which has been ordered." at 1099. It then went on to hold that the district court had not erred by directing the union in the course of the new election not to use an invalid bylaw provision, notwithstanding the fact that that violation might not even have constituted a ground to set aside the election in the first instance.

Accordingly, the new election once ordered is subject to the Secretary's supervision and directives in all respects. The Secretary has the supervisory power to determine whether the provisions of the union's constitution and by-laws are lawful within section 481, to require that the union abandon or modify those provisions he determines to be violative of the section 481, to determine the date of the election and, in the event the union refuses to adhere to the Secretary's directives, to seek appropriate judicial assistance.

Illegal Provisions of the IOMM&P Constitution and Offshore Division By-Laws.

One such set of illegal provisions in fact exists in the charters of the IOMM&P and the Offshore Division. As structured by the IOMM&P Construction and Offshore Division By-Laws, the three International officers—who are elected by a vote among all members of the union—automatically become the three top officers of the Offshore Division without there being a separate election therefore among the members of the Offshore Division only. See IOMM&P Constitution, Art. IX, Sec. 8, (A

1331-1332); Art. VI, Sec. 1(g), Sec. 2(d) and Sec. 3(m) (A. 1318-1322); Offshore Division By-Laws, Art. V, Sec. 1 (A. 1348). In their capacities as Executive Officer, Assistant Executive Officer and Financial Officer of the Offshore Division each has significant responsibilities and performs significant duties for the Offshore Division alone.*

Pursuant to Section 481 labor organizations must *elect* their officers. If they fail to do so they violate Sections 481(a), (b) or (d) (which mandate that elections be held) as well as Section 481(e) (which requires that each member have the right to nominate, vote for and otherwise support the candidate or candidates of his choice).

The union does not contend that the Offshore Division is not a labor organization as defined in the Act (29 U.S.C. § 402(i) and (j)) or that the Offshore Division Executive Officer, Assistant Executive Officer and

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* The Offshore Division by-laws set forth the duties of these Executive officers, Art. VI, Secs. 1, 2 and 3. (A. 1348-1349).

Among other things the Executive Officer enforces all provisions of the Offshore Division collective bargaining agreements; acts as chairman or designates a chairman of the Offshore Division's collective bargaining Negotiating Committee; and settles disputes, interpretations, grievances or complaints involving Offshore Division collective bargaining agreements.

The Assistant Executive Officer, *inter alia*, assists the Executive Officer and acts in his stead when the latter is not able to perform his duties.

The Financial Officer receives all monies payable to the Offshore Division and directly, or through delegates, issues receipts for the same. Additionally, among his other duties, he is responsible for the Offshore Division's records, bonds and its other finances and property and signs all checks in payment of the Offshore Division's obligations.

Financial Officer are not officers, as also defined in the Act (29 U.S.C. § 402(n)).*

The IOMM&P maintains, rather, that 1) the Act "does not impose an absolute requirement that each member of a labor organization have a right to vote for all officers who govern that labor organization," 2) the Act does not "impose an absolute prohibition against any person who is not a member of a particular subordinate organization (but who is a member of the parent organization) participating in the selection of persons to fill prescribed positions in the subordinate organization," and 3) the Act does not impose an "absolute prohibition upon duly elected officers of a parent union serving, by virtue of their offices, as officers of a subordinate union."

These arguments miss the point entirely. The Secretary is not complaining, for example, that the union failed to give each member a right to vote for a candidate for office where an election was held. Nor is the

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* The Offshore Division Executive officers perform enough of the functions (see footnote p. 37, *supra*) set forth in 29 U.S.C. § 402(i) to more than qualify the Offshore Division as a labor organization. This fact was reaffirmed by the union's counsel in his papers submitted in response to the Secretary's motion for summary judgment (A. 1815-1816). See also, statements made by International Secretary Lowen during his deposition (A. 2319, 2339, 2340 and 2347). See *Brennan* v. *United Mine Workers of America*, 475 F.2d 1293, 1296 (D.C. Cir. 1973).

Under the definition of "officer" (29 U.S.C. § 402(n)) the three Executive Officers of the Offshore Division must not only be considered "constitutional officers" by virtue of their inclusion in the Offshore Division By-Laws, but also these officers perform such "executive functions" as to require that they be deemed "officers" under the definition. See also statements made by International Secretary-Treasurer Lowen during his deposition A. 2345-2346). See *Wirtz* v. *National Maritime Union of America*, 399 F.2d 544, 550-553 (2d Cir. 1968).

Secretary attempting to place an absolute restriction on one individual from holding two executive offices. Rather, the Secretary maintains that if a position is to be filled that has certain "executive responsibilities," it must be filled by a separate election among those whom the officer will represent. The Secretary would not object if a member of the Offshore Division wanted to run for both International President and, simultaneously for Offshore Division Executive Officer, *provided* that there were separate elections held for both positions, and that with respect to the Offshore Division position the election was held among the Offshore members only.

It cannot be argued that the Offshore Division members participated sufficiently in the selection process of their own top officers through their voting for International officers. That argument would be contrary to democratic principles as known in the United States upon which union elections must be based. See *Wirtz* v. *Hotel, Motel & Club Employees, Local 6*, 391 U.S. at 496, 504. It is tantamount to arguing that it would be proper for the President of the United States to assume the role of Governor of New York simply because the people of New York participated in the President's selection. That is precisely the relationship between the IOMM&P International officers and the three top officers of the Offshore Division that the union suggests is proper. Such a scheme is undemocratic and should not be tolerated. The Offshore Division performs significant, separate functions for its members. These members alone should have the right to elect their own officers.

In *Hotel, Motel & Club Employees*, *supra*, the Supreme Court noted that the congressional history of the Act "indicated a need to protect the rights of the rank-and-file members to participate fully in the operation of their union through processes of democratic self-government, and, through the election process, to keep the union leadership responsive to the membership." 391 U.S. at 497. In both the House and Senate the point was well articulated: "The Government which gives unions . . . power has an obligation to insure that the officials who wield it are responsive to the desires of the men and women whom they represent." S. Rep. No. 187, 86th Cong., 1st Sess., (1959); H.R. Rep. No. 741, 86th Cong., 1st Sess., (1959); 1959 U.S. Code Cong. & Adm. News, pp. 2336 and 2438.

The scheme whereby Offshore Division Executive officers are "elected", however, is fraught with the potential for electing those who are not "responsive" to or representative of the Offshore Division membership. It is not unlikely that an Offshore Division member running under the present scheme for International President could receive a majority of Offshore Division votes but fail in his bid to become International President. This result would deprive Offshore Division members of their choice for Offshore Division Executive Officer, an officer who performs vital functions for the Offshore Division as a separate entity.*

A fair reading of Sections 481(a), (b) and (d) of the Act leads to the clear conclusion that each labor organization must elect its own officers.* Democratic principles require that those who are to be represented should alone have a right to select their representatives. Their votes should not be diluted by outsiders whose interests may not always coincide. If the IOMM&P wants to concentrate power in its International officers, they can do so by modifying its charter in some appropriate way. However, the scheme now used to effect that purpose does not square with the requirements of Section 481.**

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*Indeed, this is just what happened in the 1974 election for International Secretary-Treasurer. Incumbent Secretary-Treasurer Lowen was defeated by Captain Brown in total Offshore Division votes but won the election because of his plurality in the Inland and Pilots Divisions. Although not the choice of the Offshore Division, Lowen became its Financial Officer. He now performs vital executive functions for a labor organization whose members rejected him at the polls. This, we submit, is just the kind of situation the Act sought to prohibit by requiring that labor organizations elect its own officers.

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* The Second Circuit's opinion in *Wirtz* v. *National Maritime Union of America*, 399 F.2d at 551-3 is on point. There, a port agent and certain patrolmen of the defendant union were found to be "officers" for which positions an election had not been held in violation of section 481(a). The situation is similar in the instant case.

The union cites no cases to the contrary. *Fritsch* v *District Council No. 9, Brotherhood of Painters, Decorators and Paper Hangers of America*, 493 F.2d 1061 (2d Cir. 1974), *aff'g*, 359 F. Supp. 380 (S.D.N.Y. 1973), and the other cases cited at pages 35-36 of the union's brief, at best, stand for the proposition that voting schemes such as the one here at issue are reviewable under Title IV of the Act, but not Title I. In this connection, we note that the District Judge in *Fritsch* expressly stated that the voting scheme it could not reach in that Title I action was illegal under Title IV because it permitted members of one labor organization to participate in the selection of a bargaining representative for an affiliated labor organization. 359 F. Supp at 395. The IOMM&P provisions here have the same effect. This is a Title IV action; they should be declared illegal.

** It should be noted that the Secretary brought a separate action against the IOMM&P in connection with its 1974 election of officers (75 Civ. 2095 (S.D.N.Y.)) principally complaining about this improper scheme for "de facto" appointing the Offshore Division Executive officers. The Secretary alleged that it violated Section 481(b) as well as 481(e). While Section 481(b) relates to a local labor organization, it may be the Offshore Division is more like a national organization falling within the purview of 481(a) (or possibly—but unlikely—an intermediate labor organization within the meaning of 481(d)). If one or the other were established we ultimately would have asked the District Court to permit the Secretary to amend his complaint to conform to the proof.

[Footnote continued on following page]

In his complaint the Secretary questioned the legality of this scheme but did not move for summary judgment on it; nor did the District Court rule on it. This did not mean that it ceased to be illegal. The Secretary's judgment was and is that it is improper and that its continued operation in a supervised new election would not be "lawful" under Section 482(c). The District Court, however, was not obliged to decide this issue in connection with its decision that the 1971 election was void and that a new supervised election should be conducted. Indeed, the District Court might never have been called upon to rule on this illegal scheme. Unless and until the union defied the Secretary's "supervisory" directive with respect to it, there was no certainty the union would not abandon these improper Constitutional and By-law provisions. In not ruling on the matter Judge Motley exercised proper restraint by leaving to the Secretary's authority, in this first instance, the supervision of the new election in all respects.

This Court need not decide what type of labor organization the Offshore Division is, however, for no matter what it is called the plain fact is that *no election* was held for its Executive officers. That is all that is necessary to show a violation of Section 481 existed. Here, it so happens, the Offshore Division must hold its elections simultaneously with those of the International (Offshore Division By-Laws, Art. XIX, Sec. 2(a), A. 1356) which means its elections must be every three years (IOMM&P Constitution, Art. V, Sec. 3[¶3], A. 1310).

In addition since elections for the Offshore Division Executive officers were not held, necessarily the union violated Section 481(e) by not permitting members the right to nominate, vote for and otherwise support candidates of their choice. A violation of this Section, unlike those of Sections 481(a), (b) and (d), requires a showing pursuant to Section 482(c) that it "may have affected" the outcome of the election. Since no opportunity was provided at all to the members to directly nominate, vote for and support candidates for their own Executive officers, *a fortiori* these violations "may have affected" the outcome of the "elections" for these offices.

If, however, in the opinion of this Court it would seem to have been preferable for the Court below to have decided this issue, there is no reason, in the interest of judicial economy, it cannot be decided by this Court now. The matter is properly one of law. No facts are in dispute—the scheme is or is not illegal. It is apparent by this appeal the union will defy the Secretary's instructions on this matter. Accordingly, while the issue may shortly be before the District Court for a "supervisory" ruling, to avoid yet another appeal it may be prudent for this Court to decide this issue now.[*]

The Supervised Election Must Be Completed by December 31, 1976.

On the recommendation of the Secretary set forth in his proposed judgment, Judge Motley ordered that the supervised election be completed by December 31, 1976, —nearly nine months from the entry of the final judgment and order. The union had urged that the supervised election be conducted at the time of the next regularly scheduled election which in this case would be from the middle to the end of 1977.

As the Court in *Brennan* v. *Local 551, United A., A. & A. Imp. Wkers. of A. Inc., supra* at 7, held, "the Secretary's power to supervise an election required by a court order clearly includes the power to set the date of that election." In the instant case, in view of the procedures necessary to conduct an election for this sea-going union, a completion date of December 31, 1976 is well founded and consistent with the purposes of the Act.

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[*] There is no reason this issue, now one of law, cannot be decided by this Court if it chooses. See legal support page 46, *infra*. We note that the union originally moved for summary judgment with supporting papers on this point. (A. 1813-1818).

The Act itself contemplates that a tainted election should be remedied quickly, as evidenced, for example, by the provision that precludes a stay of an order directing a new election pending appeal (29 U.S.C. § 482(d)). See Cox, Internal Affairs of Labor Unions, Under the Labor Reform Act of 1959, 58 *Mich. L.R.* 819, 845 (1960). There is good reason for that policy. If the law were to permit a union to insist that a supervised election be conducted whenever it held its next regular election, there would be no incentive whatsoever for unions to obey the requirements of Section 481. Candidates would just violate the law, get themselves elected and stay in office until the next regular election, building the benefits of incumbency, and then start the same process all over again.

Incumbents—whether elected during the tainted election or at a subsequent unsupervised election—should not be permitted to prolong their terms more than is absolutely necessary. The day to day decisions of the union leadership should be given, as soon as possible, to those who, in the scheme of the Act, are properly elected during a supervised election. Those in office should not be given a preference—by virtue of their incumbency—over other candidates in the next election.

In the instant case, the union officers elected in the 1974 election had been in office for approximately one year, or one-third of their term, when Judge Motley granted summary judgment and ordered a new election. The union's next regularly scheduled election will not take place until late 1977,* with newly elected officers not installed until 1978 at the earliest. Thus, the union, in effect, is asking that its present officers be allowed a grace period in excess of half their terms of office. To wait this long would do violence to the Act's purpose of remedying a tainted election expeditiously. That a new election not aligned with the union's next regular election may add further cost or cause the normal electoral processes set forth in the union's constitution to be disrupted is no excuse for delaying a supervised election. If elaborate election procedures, for example, could serve as an excuse to delay a supervised election, unions would only be encouraged to include such procedures in their charters as a safety valve in the event an election case is brought by the Secretary. Congress anticipated that the normal election provisions in a union's constitution might not always be the most suitable during a court ordered election and that is precisely why the Act permits the Secretary to supervise a court ordered election consistent with the union's constitution so far as it is "lawful and *practicable*" (Section 482(c)).

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* Nominating conventions are held in the summer. Election ballots will be mailed in September to be returned no later than three months later, as was the procedure in 1971 and 1974.

The fact that the union has been ordered to conduct another referendum concerning the adoption of its 1970 constitution by Judge Knapp also is no excuse to delay the supervised election, as the union suggests. (Appellant's Brief, pp. 32-33) As the District Court observed, the possibility of the 1970 Constitution being discarded and another election mandated was "far too tenuous to prevent this court from remedying the violations which it finds to have occurred in the matter duly before it." (Opinion, n.2, A. 2890). In that connection we note that if the Constitution were discarded under Judge Knapp's scheme, it would not be for quite some time.*

In summary, we submit that neither the Secretary's request nor the Court's order that the election be completed by the end of this year was abitrary. Indeed, to have further prolonged the election would have contravened the Act's goal that supervised elections be held quickly.

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* Nor can one be sure that even Judge Knapp's schedule will be complied with. Counsel for the IOMM&P has advised in fact, that he has requested a conference with Judge Knapp to ascertain if the order in that case should not in some way be modified in view of Judge Motley's holding.

POINT IV

This Court may examine other violations committed during the 1971 election to sustain the district court's decision in the event the "Newsletter" is insufficient.

An appellate court does not have to affirm a decision on a summary judgment motion for the same reason that persuaded the court below to grant the motion. It can find another ground, based on anything that appears in the record, for concluding that the movant is entitled to judgment as a matter of law. Wright & Miller, Federal Practice and Procedure: Civil § 2716, p. 440; *Bigelow* v. *Agway, Inc.*, 506 F.2d 551, 555 (2d Cir. 1974); *Picture Music, Inc.* v. *Bourne, Inc.*, 457 F.2d 1213, 1215 n.5 (2d Cir. 1972).

In the instant case the Secretary moved for summary judgment on five of the violations alleged in the complaint. See p. 3, *supra*. Judge Motley found that the violations caused by the preparation and distribution of the Newsletter was alone sufficient to void the 1971 election and to order a new election subject to the Secretary's supervision. The District Court did not feel it necessary to rule on the other four violations since the Newsletter "comprehends all the contests in the election which are involved in the additional alleged violations, and any decision regarding such violations would not affect the ultimate disposition of the case." (Opinion, A. 2888-2889).

In the event this Court disagrees with Judge Motley's findings that the Newsletter was campaign material and believes that Judge Croake's decision to that effect is not binding on the union, we urge it to examine the record with respect to the other issues on which the Secretary moved for summary judgment for an alternative basis upon which to support the order of a new supervised election. It would be in the interests of all parties and judicial economy to proceed in this way.

Each of the other four violations was fully briefed below and all relevant factual material was supplied. Without elaborating on each we respectfully refer this Court to those portions of the parties' District Court memoranda related to each violation. Those memoranda provide ready reference to all supporting data which also appears in the Joint Appendix.

1. The violations of Sections 481(c) and (g) caused by the preparation and mailing of the "Eleven Pledges": Secretary's memorandum—A. 1654-1660; IOMM&P's Response—A. 1789-1790; Secretary's Reply—A. 1944-1945.

2. The violations of Section 481(e) caused by prohibiting certain members of the Offshore Division's Atlantic and Gulf areas from participating in any way in the selection of Offshore Division Vice Presidents for the Atlantic and Gulf Areas: Secretary's Memorandum—A. 1661-1671; IOMM&P's Response—A. 1790-1796, 1863-1864; Secretary's Reply—A. 1946-1953.

3. The violation of Section 481(e) caused by the union's failure to mail ballots within 30 days after the close of nominations (i.e. not in accordance with IOMM&P Constitution): Secretary's Memorandum A. 1673-1677; IOMM&P's Response—A. 1796-1800, 1864-1866; Secretary's Reply—A. 1953-1956.

4. The violation of Section 481(e) caused by the failure to provide candidates with a certified list of Local 88 (now the Port of New York) members (i.e. not in accordance with Offshore Division By-Laws): Secretary's Memorandum—A. 1677-1683; IOMM&P's Response—A. 1800-1802, 1866-1867; Secretary's Reply—A. 1957-1962.

It is submitted that since there were and are no material facts genuinely in dispute with respect to the above violations, nothing would preclude this Court from rendering a decision thereon if necessary.

CONCLUSION

It is respectfully requested that the judgment and order appealed from be affirmed, and that if this Court finds it would be preferable to reach a decision regarding the legality of the scheme whereby International officers of the IOMM&P automatically become the three top officers of the Offshore Division, then such scheme should be declared illegal in violation of Section 481 of the Act.

Respectfully submitted,

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76-6076

To be argued by
Marvin Schwartz

United States Court of Appeals

For the Second Circuit

W.J. Usery, Secretary of Labor,
United States Department of Labor,
Plaintiff-Appellee,

—against—

International Organization of Masters,
Mates and Pilots, International Maritime
Division, ILA, AFL-CIO,
Defendant-Appellant.

DEFENDANT-APPELLANT'S REPLY BRIEF

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June 15, 1976

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

---x

W.J. USERY, Secretary of Labor,
UNITED STATES DEPARTMENT OF LABOR, x

Plaintiff - Appellee,
x
-against- 76-6076

INTERNATIONAL ORGANIZATION OF MASTERS, x
MATES AND PILOTS, INTERNATIONAL MARITIME
DIVISION, ILA, AFL-CIO,
x
Defendant-Appellant.

---x

DEFENDANT-APPELLANT'S REPLY BRIEF

PRELIMINARY STATEMENT

In this reply brief we will respond to the arguments contained in the first three points of the Secretary's brief. We do not believe the fourth point requires reply.*

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* In their Point IV, the Secretary's attorneys urge that this Court examine on its own the additional claims of violation raised in their motion for summary judgment which were not passed upon below. In light of their failure to even brief these issues to this Court, we do not believe it fair to either the Court or the appellant to suggest that the Court determine these serious issues on the basis of its own culling of the voluminous record below. In any event, (taking the contentions enumerated at p.47 of the Secretary's brief) contentions 2 and 4 relate only to Offshore Division and not International officers; contention 3 borders on the frivolous and cannot under summary judgment standards satisfy the "may have affected" requirement; and contention 1 falls a fortorari if the determination on the Newsletter which underlies the decision below is reversed.

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As we noted in our opening brief, the principal practical issue, and the one which impelled the Union to press this appeal, is whether the IOMM&P should be compelled to undergo yet another expensive, wrenching election in 1976 (after a regular election in 1974 and a run-off for principal officers in 1975) or whether, consistent with the statutory purposes, the election can and should be deferred until 1977 when the present terms of office expire. Although the Union maintains that no supervised election is necessary or warranted by law, its principal concern is not with the fact of government supervision but with the question of timing.

REPLYING TO APPELLEE'S POINT I

A.

The Secretary's brief in effect concedes that the material in the Newsletter was confined to the affiliation issue and to the stands of O'Callaghan and Sheldon on that issue. Moreover, no claim is or could be made that the timing of the referendum was manipulated for election purposes or that the Union, if it was to get its views across at all, could have done so at any time other than when it did. Because, however, both Presidential candidates took strong positions on the affiliation issue, the Secretary argues that the Union was disabled from distributing literature which discussed these positions and commented upon the motives of those opposing the referendum proposition.

The Secretary's position lacks merit both in the abstract, and, more particularly, in its application to the facts of this case. What the Secretary in effect contends is that when an independent issue arises at the same time as an election, then irrespective of the importance of that issue to the future and survival of the organization, the union through its elected leadership is powerless to communicate with the membership on the substance,nature and motivation of the opposition if one of the election candidates has taken a public position on the issue. And if the union officials lack the independent financial means to finance the distribution of pro-referendum views, then the membership will never know why the anti-referendum propaganda is both scurrilous and false or the reasons for its propagation.

The Secretary's failure to perceive the factual context of the 1971 Newsletter also bears directly on his erroneous contention that there were no facts to be developed at trial and that the Newsletter should be evaluated on its face. What the Secretary overlooks is that this Newsletter was not an unprovoked attack upon Sheldon or anyone else, it was a response to literature and charges previously disseminated on a wide scale by affiliation opponents, including Sheldon. Nor is this a case in which the union officials had ample funds to draw upon, while the opposition was penniless. Here the opponents had ample outside financing through the rival union which sought to defeat ILA affiliation; the elected union leadership had none. A trial would have developed not only the nature and scope of the opposition effort, but the sources of its support and the motive of its sponsors. These were all legitimate subjects of union reply; and the fact that the language used was "robust" does not detract from the reasonableness and justification of the union's action.

The cases cited in the Secretary's brief (p. 23) are not in point. Both Wirtz v. Independent Workers Union of Florida, 272 F. Supp. 31 (M.D. Fla. 1967) and Hodgson v. Liquor Salesmen's Union, Local No. 2, 334 F. Supp. 1369 (S.D.N.Y. 1971), affd 444 F. 2d 1344, involved direct election propaganda. In each case the incumbent's self-praise and attack upon his opponent related to the forthcoming election and the incumbent's superiority as an elected candidate. In neither case was the challenged reference exclusively directed at another pending issue.

B.

On the claim of collateral estoppel, the Secretary erroneously contends that the union "waived" its right to appeal from Judge Croake's 1971 order by voluntarily dismissing the appeal after the election was over. The completion of the election, however, mooted the appeal in that pre-election proceeding and the appeal was, therefore, properly dismissed. Golden v. Zwicker, 394 U.S. 103 (1969); DeFunis v. Odegaard, 416 U.S. 312 (1974); United States v. W.T. Grant Co., 345 U.S. 629 (1953). Once the election had ended, the issues could only be litigated in a post-election suit by the Secretary. In acknowledging the pre-election case to be moot, the union "waived" nothing. To the contrary the Secretary's position in this action would deprive the Union of the right to effective appellate review at any point.

REPLYING TO APPELLEE'S POINT II

In dealing with the question of whether a supervised election should be held and if so, when, the Secretary's brief treats the issue in general terms without any particular attention to the facts of this case. We readily acknowledged in our main brief that notwithstanding an intervening election, if the statutory purpose of protecting the democratic election process and preventing the improper perpetuation in office of incumbents requires a supervised election, then one should be held. We also acknowledged that in the usual case, these statutory purposes will not be satisfied by an intervening election. We urged, however, that under the particular facts herein a supervised election is not required; and that in any event the results of the 1974 election remove any urgency from the situation and, indeed, render the decision below arbitrary, capricious and an abuse of discretion in its insistence upon thrusting the IOMM&P into a very costly and divisive election at this time.

The Secretary argues that our position is dependent upon a formal determination of the validity of the 1974 election and that this would enable a labor organization to thwart effective relief indefinitely (Sec'y Brief, p. 30). This contention is wholly without merit. It requires no further proceeding to recognize that the incumbent President, who was allegedly benefited by the 1971 Newsletter, lost in 1974-1975 and no longer holds union office and that incumbents in other principal offices were also defeated. It is likewise known that the alleged 1971 taint relied on below related to but a single piece of literature and not to any Constitutional infirmity or corruption in the election process. Also undisputed is the fact that in 1973 many candidates stood for election for the various union posts, and no one was apparently deterred by the 1971 events. And finally, the costs of a new election are well documented and subject to ready check.

Equally without foundation is appellee's rather flip comment that the costs of a 1976 election should not be considered, for otherwise a union might establish "elaborate election procedures" to delay a supervised election. A mere reading of the IOMM&P Constitution (J.A. 1291) which contains the election requirements and procedures, will convincingly demonstrate that these "elaborate" procedures are designed to assure democracy, to increase both membership participation and outside supervision, and thus to foster membership confidence in the integrity of union referendum and election processes.

Indeed, it has been judiciailly held that the cost of a new election may be considered by a Court in a proceeding to set aside, as arbitrary and capricious, the Secretary's determination of the date of a supervised election. Brennan v. Local 551, UAW, 486 F. 2d 6 (7th Cir. 1973). And Courts have not hesitated to defer the holding of supervised elections in the interests of justice and equity. Wirtz v. Local 169, Hod Carriers, 246 F. Supp. 741 (D. Nev. 1965); Wirtz v. Independent Workers Union of Florida, 272 F. Supp. 31 (M.D. Fla. 1967); Note, The Election Labyrinth: An Inquiry into Title IV of the LMRDA, 43 N.Y.U.L. Rev. 336, 375-380 (1968). Moreover, any practitioner representing labor organizations knows that the Secretary frequently settles union election cases by agreement empowering him to supervise the next regular election, even though that may be many months in the future.

The cases cited in appellee's brief do not support his position. Those that follow Glass Bottle Blowers, 389 U.S. 463 (1968) all involve fact situations in which incumbents prevailed in subsequent elections or for other clearly discernible reason the public interest in the integrity of the election process required a supervised election. The only case in which the incumbent was subsequently defeated is Brennan v. Steelworkers, Local 3489, 520 F. 2d 516 (7th Cir. 1975). In that case, however, the taint lay in a by-law provision which rendered more than 96% of the local's membership ineligible to run for union office. From the Court's opinion it would seem that this by-law provision remained in effect during the subsequent election. Obviously, a new election in which 96% of the membership was barred from seeking office could hardly be deemed corrective of the original taint. The facts at bar are totally different.

Although the Secretary's brief notes the uncertainty created by Judge Knapp's decision on the invalidity of the ratification referendum on the IOMM&P's 1970 Constitution, it contents itself with repeating, without elaboration, Judge Motley's own unexplained conclusion that the possibility of a new election being required because of defeat of the 1970 Constitution is "too tenuous". Given the extremely close vote on this same issue in 1970, no reason suggests itself as to why this should be deemed only a "tenuous" possibility and the Secretary's brief suggests none either. We do note, however, that appellee's brief errs in stating, at p. 17 that it is only the Union which suggests that the Constitution "could" be discarded in 1977 and that an election would then have been compelled unnecessarily. Judge Motley's own opinion so states in footnote 2.

Finally, appellee's brief misleadingly states that the choice is between an election ending in 1976 and one ending in 1978. In fact the election ordered below can commence no earlier than June 1976 while the regular 1977 election will commence in June 1977. The time involved is one year, no more.

REPLYING TO APPELLEE'S POINT III

The Secretary's brief cites no judicial decision approving the administrative invalidation of union Constitutional provisions in the course of supervising an election. In Brennan v. Local 639, IBT, 494 F. 2d 1092 (D.C. Cir. 1974), the District Court, not the Secretary, invalidated the challenged by-law provision. Unlike the instant case, the challenge to the by-law was fully litigated in the summary judgment motion, and the Court's order was issued virtually simultaneously with its summary judgment. Moreover, the by-law had initially been invalidiated by the International union itself which then sought to reinstitute a modified version for purposes of the pending election only. Characterizing this as an effort to "retroactively adopt and apply" a new election requirement, the Court held that the proposed new provision could not properly be considered part of the union's Constitution to govern the supervised election. Nothing of the sort appears in the case at bar.

Appellee suggests that if the propriety of leaving issues of Constitutional validity to the Secretary's supervisory determination is in doubt, then this Court should now decide the merits of the question. Although we do not believe we should be required to develop an argument on so serious an issue in a reply brief on an expedited appeal, we shall set forth our position in the event the Court adopts appellee's position.

The Secretary advances no authority in support of his contention that the Constitution of a subordinate labor organization cannot provide that designated International officers shall also serve in corresponding offices within the subordinate body. No case, to our knowledge, so holds, and appellee cites no legislative history in support of his theory. Our own examination of the legislative history discloses nothing indicative of a Congressional intent to bar this type of Constitutional provision.

Titles I and IV of the LMRDA are clear in their commands and proscriptions. All members must have the right to nominate, run for office and support candidates, subject to reasonable regulation. There must be a secret ballot election and the rules as to campaign procedures must be observed. Concededly, the IOMM&P Constitution meets all these standards and requirements.

The Secretary is thus reduced to arguing (Br. p. 39) that the LMRDA embodies "democratic principles as known in the United States" and that the IOMM&P Constitutional structure violates these principles. But as we have shown in our principal brief (pp. 34-36) the LMRDA does not mandate one man-one vote, American Federation of Musicians v. Wittstein, 379 U.S 171 (1964), nor does it require that every member be empowered to vote for every officer.

The test, in our view, is whether the Constitutional structure is reasonable. It is embodied in the Offshore Division Constitution which was adopted by the membership of the Offshore Division itself and no one else. It was part of an effort to centralize responsibility. And it has important fiscal consequences, for the International officers receive no additional compensation for their services to the Offshore Division. If Offshore Division officers must all be separately elected, and members may thus be elected to Offshore Division office alone, how are they to be compensated for their work? Nothing in the LMRDA prohibits the members of a subordinate labor organization division from maintaining modestpayroll by providing that officers elected by themselves and fellow members of the same International shall serve as officers of the subordinate body.

CONCLUSION

For all the foregoing reasons and for those set forth in our principal brief, we respectfully urge that the Judgment and Order below be vacated and the case either dismissed or remanded for trial. Alternatively, we urge that the Judgment be amended to provide for supervision of the next regular election commencing June 1977.

DATED: June 15, 1976
New York, New York

Respectfully submitted,

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 1209 September Term, 1975.

(Argued June 18, 1976 Decided July 12, 1976.)

Docket No. 76-6076

W. J. USERY, Secretary of Labor,
UNITED STATES DEPARTMENT OF LABOR,

Plaintiff-Appellee,

—against—

INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS,
INTERNATIONAL MARITIME DIVISION, ILA, AFL-CIO,

Defendant-Appellant.

Before:

MANSFIELD, OAKES and GURFEIN,

Circuit Judges.

Appeal from an order of the United States District Court for the Southern District of New York (Motley, *J.*) finding a violation of 29 U.S.C. § 481, and directing that a supervised election be held by the end of 1976. The judgment is modified to require the supervised election to be completed by the end of 1977, and as modified, is affirmed.

MARVIN SCHWARTZ, New York, N.Y. (Burton M. Epstein, New York, N.Y., of counsel), *for Defendant-Appellant.*

Dennison Young, Jr., Assistant United States Attorney, Southern District of New York (Robert B. Fiske, Jr., United States Attorney, and Stuart I. Parker and Frederick P. Schaffer, Assistant United States Attorneys, Southern District of New York, and Francis V. LaRuffa, Regional Solicitor; Rudolph E. DeMeo, Attorney, Department of Labor, of counsel), *for Plaintiff Appellee.*

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Gurfein, *Circuit Judge*:

This is an appeal from a summary judgment by the United States District Court for the Southern District of New York, Constance Baker Motley, *Judge*, ordering the defendant International Organization of Masters, Mates & Pilots ("the Union") to conduct a new election for its three International officers and all of its Offshore Division officers, under the supervision of the Secretary of Labor ("the Secretary") to be completed no later than the end of 1976.

The action was filed by the Secretary on November 28, 1972 to declare void the Union election that had been held by mail ballots between September 21, 1971 and December 22, 1971 ("the 1971 election"). The action was brought under Title IV of the Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 481 *et seq.* Jurisdiction is conferred by Section 402(b) of the Act, 29 U.S.C. § 482(b).

Though the action was filed in November 1972, the motion for summary judgment to void the 1971 election was not made by the plaintiff until December 17, 1974, returnable on January 2, 1975. The decision to grant

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summary judgment was not filed until March 17, 1976 and judgment was entered on April 15, 1976.

In the meantime, while the action was pending, two significant events occurred. The time for another regular election pursuant to the Union constitution arrived and it was held by mail balloting between September 1974 and January 1975 under the supervision of the American Arbitration Association ("AAA").[1]

The other event was the action of this court in sustaining a complaint in the Southern District of New York by Union members seeking an injunction to prevent the new Union constitution adopted in 1970 from becoming effective. See *Sheldon* v. *O'Callaghan*, 497 F.2d 1276 (2 Cir.), *cert. denied*, 419 U.S. 1090 (1974). The case was remanded to the District Court for further proceedings and Judge Knapp ordered a new referendum on the 1970 constitution to be completed by February 26, 1977 until which time the present constitution remains in force. We discuss the significance of the validity of the 1970 constitution below.

The history of the elections and ensuing controversies may be stated briefly.

From September to December 1971, the Union, pursuant to its constitution, conducted an election for officers of the International Union. During roughly the same period (from August to November 1971), a referendum was conducted on the question of whether the Union should affiliate with the International Longshoremen's Association ("ILA"). In connection with this referendum, on August 19, 1971, a Newsletter was mailed to all of the members of the Union. This Newsletter contained certain remarks by Thomas Gleason, President of the ILA, which strongly praised O'Callaghan, the incumbent president of the Union, who was running for re-election, and strongly criticized Sheldon, an opposing candidate for president who strongly opposed the proposed affiliation with the ILA. Based on the mailing of this Newsletter, the distribution of which was alleged to violate 29 U.S.C. § 481, Sheldon and two other candidates brought an action alleging the illegality of the distribution of the Newsletter and requesting that the ballots for the forthcoming election not be mailed. Although the specific Newsletter involved related directly not to the election but rather to the referendum, it was alleged by the Sheldon plaintiffs that the statements regarding the candidates for office contained in this Newsletter were such as to affect the fairness of the election.

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[1] The Union has about 10,000 members residing all over the United States, most of whom are deck officers serving the American merchant marine. At any given time a large proportion of the membership is serving aboard ship. Under the Union constitution, accordingly, elections are held every three years by mail ballots. Nominations begin in June of an election year and there is a ninety day balloting period ending in December of that year.

In the 1974 Presidential and Vice-Presidential races, no candidate received the 40% plurality prescribed by the constitution as the minimum vote necessary for outright victory. Accordingly, a run off election was held for the top positions which extended the election until June 1975. The incumbent President (O'Callaghan), the beneficiary of the challenged 1971 Newsletter, was defeated in the 1975 run off.

Judge Croake refused to issue a preliminary injunction of the balloting but ordered the Union to distribute at its own expense the campaign literature prepared by the plaintiffs. Pursuant to Judge Croake's order and shortly before November 9, 1971, Sheldon, the competing nominee for President, submitted his literature to the AAA. The AAA mailed the literature shortly after November 9, 1971, but by that time 3,000 to 4,000 ballots had already been cast and returned, without benefit of the Sheldon literature. Judge Motley subsequently held, in granting summary judgment, that "the voting which took place before November 9 was clearly of such magnitude that the results of the entire election could have hinged on the effect of the Newsletter on this pre-remedy balloting." (Opinion of Judge Motley at 27).

The relevant statute, 29 U.S.C. § 481(g), provides that no moneys received by any labor organization "shall be contributed or applied to promote the candidacy of any person in an election" of union officers.[2] Furthermore, § 481(c) provides that every labor organization must "comply with all reasonable requests of any candidate to distribute" campaign literature to all members of the Union "and to refrain from discrimination in favor of or against any candidate with respect to the use of lists of members. . . ." The statute further provides that whenever any mailing is made by the Union on behalf of any candidate, similar distribution of campaign literature must be made at the request of any other *bona fide* candidate.[3]

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[2] Section 481(g) reads in full:

> No moneys received by any labor organization by way of dues, assessment, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election subject to the provisions of this subchapter. Such moneys of a labor organization may be utilized for notices, factual statements of issues not involving candidates, and other expenses necessary for the holding of an election.

[3] Section 481(c) reads:

> Every national or international labor organization, except a federation of national or international labor organizations, and every local labor organization, and its officers, shall be under a duty, enforceable at the suit of any bona fide candidate for office in such labor organization in the district court of the United States in which such labor organization maintains its principal office, to comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature in aid of such person's candidacy to all members in good standing of such labor organization and to refrain from discrimination in favor of or against any candidate with respect to the use of lists of members, and whenever such labor organizations or its officers authorize the distribution by mail or otherwise to members of campaign literature on behalf of any candidate or of the labor organization itself with reference to such election, similar distribution at the request of any other bona fide candidate shall be made by such labor organization and its officers, with equal treatment as to the expense of such distribution. Every bona fide candidate shall have the right, once within 30 days prior to an election of a

The Union constitution provides for elections every three years. Before the Secretary had moved for summary judgment, the balloting for the 1974 officers election was well underway. The fairness of the 1974 election procedure is conceded by the Secretary.[4] As a result of the 1974 election, two of the three international officer incumbents (including O'Callaghan) were defeated, as were close to two-thirds of the local incumbent officers.

The appellant argues that the judgment and order should be vacated and the case dismissed on the merits or as moot; alternatively, it argues that if a supervised election is required, it should be held at the time of the next regular triennial election commencing June 1977.

We agree with the District Court that because of the timing of its distribution during an election campaign, the Newsletter laudatory of the incumbent President and derogatory of his opponent paid for by the Union and distributed from its mailing list was prohibited campaign literature in violation of Section 481(g). See *Hodgson v. Liquor Salesmen's Union Local No. 2*, 334 F. Supp. 1369, 1377 (S.D.N.Y.), *aff'd*, 444 F.2d 1344 (2 Cir. 1971); *Wirtz v. Independent Workers Union of Florida*, 272 F. Supp. 31 (M.D. Fla. 1967). The finding that the Union failed

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labor organization in which he is a candidate, to inspect a list containing the names and last known addresses of all members of the labor organization who are subject to a collective bargaining agreement requiring membership therein as a condition of employment, which list shall be maintained and kept at the principal office of such labor organization by a designated official thereof. Adequate safeguards to insure a fair election shall be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots.

[4] The Secretary has challenged the 1974 election in a separate action directed only against the Offshore Division and only with respect to the provisions of the constitution relating to the election of Offshore Division officers. *Dunlop v. IOMM&P, Int'l Marine Division ILA, AFL CIO Offshore Division*, No. 75 Civ. 2095 (S.D.N.Y., filed May 2, 1975).

to offer "similar distribution at the request of [an] other bona fide candidate" compels the conclusion that there was also a violation of Section 481(c).

In finding that 3,000 to 4,000 votes had already been cast before the counter-mailing ordered by Judge Croake was effected, the District Court properly held that a *prima facie* case had been made out that the violation may have affected the outcome of the election, *Wirtz* v. *Hotel, Motel & Club Employees Union, Local 6*, 391 U.S. 492, 506-07 (1968), and that it was impossible for the Union to prove that the violation did not affect the outcome. See *Hodgson* v. *Liquor Salesmen's Union, supra; Brennan* v. *Local Union No. 639, Intl. Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America*, 494 F.2d 1092, 1097-98 (D.C. Cir. 1974). In granting summary judgment, Judge Motley found that in every Port there had been ballots cast by November 9, 1971 potentially sufficient to have changed the result in all contests of the disputed election.[5]

The Union contends, however, that even if the 1971 election was unlawful, the action brought by the Secretary was mooted when the regularly scheduled election of 1974 resulted in the defeat of the winner of the 1971 election. Since the result of the election of 1974 mooted

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[5] Section 402 of the Act, 29 U.S.C. §482(c) provides that:

> "If, upon a preponderance of the evidence *after a trial upon the merits*, the court finds—
>
> ". . . that the violation of section 481 of this title may have affected the outcome of an election,
>
> "the court shall declare the election, if any, to be void and direct the conduct of a new election under [the] supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization." (Emphasis added)

The language is not to be read literally and summary judgment lies in a proper case. *Brennan* v. *Local Union No. 639, supra*, 494 F.2d at 1094-98.

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the action, the Union concludes, the judgment below should be vacated.

The Secretary, on the contrary, takes the extreme position that the 1974 election is not to be considered at all in reviewing this action with respect to the 1971 election. Both sides have argued that the question is whether the action was rendered moot by the 1974 election. The District Court apparently accepted the Secretary's argument and felt compelled to order a supervised election before the end of 1976 as requested by the Secretary. We cannot agree.

The Secretary relies on *Wirtz* v. *Local 153, Glass Bottle Blowers Ass'n,* 389 U.S. 463 (1968), as holding that the supervening election must be disregarded in determining his right to insist on a supervised election. We think that the *Glass Blowers* case does not have that reach, and that there are two distinct questions before us: first, whether the case is mooted by the intervening election and second, if it is not, what is the proper remedy.

In *Glass Blowers* the Secretary had brought an action challenging an eligibility requirement for local office—attendance at a certain number of meetings—that disqualified a large proportion of the union's membership, and seeking to have the 1963 election declared void. While the action was pending, a regular election was held in 1965 under the same eligibility requirements. See *Wirtz* v. *Local 153, Glass Bottle Blowers Ass'n,* 372 F.2d 86, 88 (3 Cir. 1966) (opinion below).

The Court of Appeals held that the new election of 1965, concerning which no complaint had been made, rendered moot the Secretary's attack on the earlier election of 1963. The Supreme Court reversed. It held that when the Secretary of Labor proves the existence of a § 401 violation that may have affected the outcome of a challenged election, the fact that the Union had already conducted another unsupervised election does not deprive the Secretary of his right to a court order declaring the challenged election void and directing that a new election be conducted under his supervision.

Appellant invites us, nevertheless, to hold the present action moot because of the different circumstances here involved. We think that, in the light of the *Glass Blowers* opinion, the supervening unsupervised election *per se* did not render the Secretary's pending action moot, and hence deprive the court of jurisdiction. *See Local No. 8-6, Oil, Chemical & Atomic Workers Internat'l Union, AFL-CIO* v. *Missouri*, 361 U.S. 363 (1960); *St. Pierre* v. *United States*, 319 U.S. 41 (1943).[6] On the other hand, the *Glass Blowers* opinion did not concern itself with the question of remedy except in general terms. The Court simply held that the Secretary has a right to a court order which directs that a new election be conducted under his supervision, and that a second election does not oust the court of jurisdiction over the original action. Recognizing that Judge Motley had jurisdiction, we cannot vacate the judgment and dismiss the action.

But as we learned in *Hecht Co.* v. *Bowles*, 321 U.S. 321, 329-30 (1944),

> "The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it.

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[6] It is true that the Court was concerned with a supervening election in which the incumbents were returned to office under the same challenged electoral requirements, and that the Court emphasized the "perpetuation of control" by the incumbents as a factor in its decision. We recognize, nevertheless, that the Court did not limit its holding with regard to mootness to elections in which incumbents were the victors. *Cf. Brennan* v. *Local 3489, United Steelworkers of America, AFL-CIO*, 520 F.2d 516, 518 n.3 (7 Cir. 1975), *cert. granted*, 44 U.S.L.W. 3471 (U.S. Feb. 23, 1976) (No. 75-657).

> The qualities of mercy and practicality have made equity the instrument for nice adjustment and reconciliation between the public interest and private needs as well as between competing private claims."

We turn, therefore, to "the practicality" of the situation and whether equity commands a remedy different from that ordered by the District Court. We have concluded that, in the circumstances, the action of the Secretary in demanding a 1976 election was arbitrary, and that the acquiescence by the court in the Secretary's demand cannot be sustained. See *Brennan* v. *Local 551, United Automobile, Aerospace & Agricultural Implement Workers of America, Inc.*, 486 F.2d 6, 7-8 (7 Cir. 1973) (Circuit Judge Stevens) (while the Secretary has power "in the first instance" to set the date of a supervised election, proof that such decision is "arbitrary or unreasonable" will justify judicial modification.) We accordingly review the circumstances that lead us to the conclusion that the proper remedy is to order an election to be held before the end of 1977 under the supervision of the Secretary.

The persons now holding office were elected without electoral taint. The international level incumbents who benefitted from the unlawful 1971 election were, with the exception of the secretary-treasurer, defeated in the 1974 election supervised by the AAA. The election in *Glass Blowers* had the taint of ineligible voting requirements while here the vice was a single incident involving the distribution of unlawful literature. The Secretary failed to make his motion for summary judgment before the regular election of 1974, thus permitting the incumbent, O'Callaghan, if he had won, to have continued in office until final judgment. We think the public policy implicit in the Act is ill-served when court actions by the Secretary are allowed to drag on interminably while the target of the attack remains in office.[7] See *Bottle Blowers, supra,* 389 U.S. at 468 n.7. Nor should we be unmindful of the statutory admonition that "[n]o labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this subchapter." 29 U.S.C. §483. *Cf. Wirtz* v. *Local Unions 410, 410A, 410B & 410C, Internat'l Union of Operating Engineers,* 366 F.2d 438, 442 (2 Cir. 1966).

We are concerned, moreover, with the question of possibly unnecessary expense to the Union members.[8] *Cf. Wirtz* v. *Local Union 169, Internat'l Hod Carriers, Building & Common Laborers' Union of America, AFL-CIO,* 246 F. Supp. 741, 754 (D. Nev. 1965). The validity of the constitution purportedly adopted in 1970 and subsequently held to have been improperly ratified, *Sheldon* v. *O'Callahan, supra,* will be the subject of a referendum before February 1977. If the constitution should not be ratified, Judge Knapp has ordered that a constitutional convention be convened. The issue of the Union constitution may be settled by the second half of 1977. If the election is held prematurely, changes in the constitution may require a new election.

There is, moreover, an electoral problem in the Secretary's lawsuit which the District Court failed to resolve on the motion for summary judgment and which is possibly soluble before a 1977 election, though not before a 1976 election. This concerns the election of officers of the Offshore Division. See note 4, *supra*. In the action before Judge Motley, the Secretary contended that members of the Offshore Division of the Union were denied the right to nominate candidates or to be candidates for the office of the Offshore Division Vice-President (Atlantic) and Offshore Division Vice-President (Gulf). Provisions of the International Constitution and the Offshore Division By-Laws do not permit a direct vote by Offshore Division members for Offshore Division Vice Presidential positions. The Port Agents for the Port of New York and the Port of Galveston, who are elected only by members in each Port, respectively, become *ipso facto* Vice-Presidents of the Atlantic and Gulf Divisions. Members of other Ports in the Atlantic and Gulf Divisions have no voice in who becomes Vice-President of those Divisions. The Secretary maintains that these provisions are in violation of 29 U.S.C. § 481(e).[9] The Union contends otherwise.

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[7] The statute provides that if the Secretary initiates an action the election is presumed valid until the court has adjudged it invalid. 29 U.S.C. §482(a). The incumbent therefore remains in office during the pendency of the Secretary's challenge of the election in the courts.

[8] The record indicates that the costs for the various items involved in the 1974-75 election amounted to $262,846.28. These included printing, Ballot Committee expense, fees to the AAA for the election and run off Election, cost of transcripts and fees for counsel to the Ballot Committee.

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[9] Section 481(e) provides:

> In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 of this title and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. Not less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address. Each member in good standing shall be entitled to one vote. No member whose dues have been withheld by his employer for payment to such organization pursuant to his voluntary authorization provided for in a collective bargaining agreement shall be declared ineligible to vote or be a candidate for office in such organization by reason of alleged delay or default in the payment of dues. The votes cast by members of each local labor organization shall be counted, and

The positions of Offshore Vice-Presidents will be filled in whatever election is ordered. The Secretary asserts that in a supervised election he has the power unilaterally to void the disputed provisions. If the supervised election is not held until the latter part of 1977, there may be time for a final judicial decision on the validity of these provisions. It would be expensive and wasteful to require an election under a rule which is now subject to challenge, and which later may be resolved by judicial decision before a 1977 election.[10]

The combination of all these circumstances compels the conclusion that the order for a new election in 1976 was improvident in the circumstances and not compelled by the language of the statute. See *Hecht* v. *Bowles*, *supra*. A new election under the supervision of the Secretary to be held in 1977 would be "lawful and practicable, in conformity with the constitution and bylaws of the labor organization." 29 U.S.C. § 482(c). The court is not limited in a § 482(b) case to consideration of remedies proposed by the Secretary. See *Trbovich* v. *United Mine Workers of America*, 404 U.S. 528, 537, n.8 (1972).[11]

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the results published, separately. The election officials designated in the constitution and bylaws or the secretary, if no other official is designated, shall preserve for one year the ballots and all other records pertaining to the election. The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this subchapter.

[10] We are informed that since the oral argument of this appeal Judge Motley has decided that the section of the Union constitution which provides that officers of the International Division become officers of the Offshore Division is illegal, but we have seen no written order. We assume that, if an appeal is taken by the Union, it probably cannot be disposed of finally before ballots are made up for a 1976 election.

[11] The Secretary asserts that his authority to decide when to hold the supervised election is unreviewable. We do not agree. Even the fundamental question of whether the Secretary should institute an action

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We accordingly direct that the judgment be modified to order the election to be supervised by the Secretary at the regular time for holding an election in 1977. See *United States* v. *Crescent Amusement Co.*, 323 U.S. 166, 185 (1944). The judgment is otherwise affirmed.

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under § 482(b) of the Act is subject to some judicial review. *Dunlop* v. *Bachowski*, 421 U.S. 560 (1975). Moreover, instead of submitting a proposed judgment leaving the time of the election to the discretion of the Secretary, he submitted a proposed judgment in which he permitted the court to fix the time for the election in the judgment. It is this judgment which is on appeal.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JAMES D. HODGSON, Secretary of Labor, United States Department of Labor, :

Plaintiff, :

- v - :

INTERNATIONAL ORGANIZATION OF MASTERS MATES AND PILOTS, INTERNATIONAL MARITIME DIVISION, ILA, AFL-CIO, :

Defendants. :

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STATEMENT PURSUANT TO RULE 9(g) OF THE GENERAL RULES OF THE SOUTHERN DISTRICT OF NEW YORK

72 Civ. 5031 (CBM)

Pursuant to Rule 9(g) of the General Rules of this Court, plaintiff submits the following statement of material facts as to which he contends there is no genuine issue to be tried:

STRUCTURE OF THE IOMM&P IN 1971

1. The International Organization of Masters, Mates and Pilots ("IOMM&P") is a national union of ship deck officers, including ship captains and ship pilots.

2. The IOMM&P in 1971 consisted of approximately 10,500 members.

(Answers to Interrogatories, ¶14)*

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* Various documents filed with the Court shall be referred to herein as follows:

Complaint ("Complaint")
Answer ("Answer")
IOMM&P Response to Plaintiff's Request for Admissions ("Admissions")
IOMM&P Supplemental Response to Plaintiff's Request for Admissions ("Supplemental Admissions")
Deposition taken of IOMM&P International President Captain Thomas F. O'Callaghan ("O'Callaghan Deposition")
IOMM&P's additional responses to demands for information made by plaintiff during the deposition of Thomas F. O'Callaghan ("Addendum to O'Callaghan Deposition")
Part II of IOMM&P's additional responses to demands for information made by plaintiff during the deposition of Thomas F. O'Callaghan ("Addendum to O'Callaghan Deposition - Part II")
Deposition taken of IOMM&P International Secretary-Treasurer Robert J. Lowen ("Lowen Deposition")
IOMM&P's additional responses to demands for information made by plaintiff during the deposition of Robert J. Lowen ("Addendum to Lowen Deposition")
IOMM&P's Answer to Plaintiff's [First Set of] Interrogatories ("Answers to Interrogatories")

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3. In 1971, the IOMM&P had offices in major ports throughout the continental United States, Hawaii, Puerto Rico and the Canal Zone.

4. The IOMM&P, for the purposes of this action, is a labor organization as defined in 29 U.S.C. §§ 402(i) and (j).

5. The IOMM&P in the conduct of its 1971 election of officers was required to adhere to the provisions of 29 U.S.C. § 481.

(Answer, ¶6)

6. Jurisdiction of the instant is conferred upon the Court by 29 U.S.C. § 482(b).

(Answer, ¶2)

(Lowen Deposition, p 175-179)

7. On October 1, 1970 a newly adopted Constitution became effective. A true copy is annexed hereto as Exhibit A.

(Admission #5)

(See Article XIII, Section 1, IOMM&P Constitution*)

8. The IOMM&P Constitution reorganized the IOMM&P into Divisions.

(Article 1, Section 2, IOMM&P Constitution.)

9. The Offshore Division is the largest division and is comprised of members formerly members of offshore locals, now denominated as Ports.

(Article 1, Section 2, IOMM&P Constitution.)

(See also Article III, Section 1(b), Offshore Division By-Laws.**)

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* The Constitution of the IOMM&P shall be referred to as the "IOMM&P Constitution".

** Offshore Division By-Laws have been annexed hereto as Exhibit B.

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10. In 1971 there were approximately 8205 members of the Offshore Division.

(Answers to Interrogatories, ¶16.)

11. The members of the Offshore Division are seagoing ships officers, sailing aboard Atlantic, Gulf and West Coast oceangoing vessels.

12. A true copy of the By-Laws of the Offshore Division adopted October 1, 1970 is annexed as Exhibit B.

(Admission #7)

13. The Inland Division in 1971 was not fully formed.

14. Although the IOMM&P Constitution provided for an Inland Division, in 1971 Inland Locals had not yet consolidated into such a Division.

15. There were approximately 1500 members in good standing of the Inland Locals at the time of the 1971 election of officers.

(Answers to Interrogatories, ¶15)

16. The membership of Inland Locals consisted of ships' officers assigned to vessels sailing in the inland rivers, bays and sounds of the United States.

17. In addition there were approximately 600 members of Inland Local 47 which local's association with the IOMM&P was in question and whose members did not vote for International officers.

18. A third division, the Pilot Division consisted of approximately 550 members employed, in the main, as ship pilots aboard American and foreign flag ocean going vessels.*

19. In 1971 the membership of the IOMM&P by referendum ballot of the members voted to affiliate with the

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* Government Employees Division and Shoreside Division had no membership at the time of the 1971 election of officers.

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International Longshoreman's Association ("ILA") and became the International Maritime Division of the ILA, AFL-CIO.

(Answers to Interrogatories, ¶¶5 and 6)

20. The provisions of the IOMM&P Constitution (Exhibit A) were in effect at the time of the 1971 election of officers.

(Admission # 6)

21. The provisions of the Offshore Division By-Laws (Exhibit B) were in effect at the time of the 1971 election of officers.

(Admission # 8)

FRAMEWORK OF THE 1971 ELECTION OF OFFICERS

22. The IOMM & P conducted nominations for the offices of International President, International Executive Vice President and International Secretary-Treasurer at its convention held July 26-28, 1971.

(Admission #1)

23. An International Ballot Committee comprised of five delegates was nominated and elected at the July 26-28, 1971 convention.

(See O'Callaghan Deposition, pp. 56-58)

24. Nominations for International officers ended on July 28, 1971.

(Admission # 63)

25. Nominations for offices of the Offshore and Pilots Division were conducted on the respective division level, not at the International Convention.

(Admission #2)

26. The election for all offices of the Offshore Division was conducted by defendant simultaneously with the election of International officers. (Article XIX, Section

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2(a), Offshore Division By Laws).

(Admission # 9)

27. The IOMM & P selected the American Arbitration Association ("AAA") as the impartial balloting agency to conduct the 1971 election of officers.

(See Exhibit C)

(See also Article V, Section 3, IOMM&P Constitution and Article V, Section 3, Offshore Division By-Laws)

28. The mechanics of the 1971 election of officers including the preparation and distribution of ballots, inspection of membership lists and distribution of campaign literature, and the tally of ballots, were conducted by the American Arbitration Association in conjunction with the International Ballot Committee.

(Admission #4)

29. The IOMM & P conducted the voting in the 1971 election of officers by mail ballot during the period from September 21, 1971 to December 22, 1971.

(See Admission #3)

(Answer, ¶VI)

30. Election ballots were mailed by the AAA to members on September 21, 1971.

(See Admission #64).

31. In accordance with the voting instructions set forth in Exhibit C annexed hereto, ballots, in order to be counted, were required to be received in New York no later than midnight, December 21, 1971.

(Admission # 61)

32. In a self addressed envelope members were to return their election ballots by mail to the AAA in care of the American Bank and Trust Company, Bronx, New York.

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33. Election ballots returned to the American Bank and Trust were transferred to the AAA on or about December 22, 1971 for counting.

34. On September 10, 1971, a permit for business reply mail had been issued by the Bronx, N.Y. Post Office to the AAA for use in the election.

(Admission # 56)

35. A trust fund account for $800 had been established by the AAA to pay the postage for the return mail ballots.

(Admission # 57)

36. Ballots were required to be received in New York no later than midnight, December 21, 1971.

(Admission # 61).

CANDIDATES

37. Annexed hereto as Exhibits D1-D 9 are true copies of the official ballots used in the 1971 election of officers.

(Admission #12)

38. In the 1971 election of officers, the membership of the IOMM&P elected International Officers: an International President, an International Executive Vice President, and an International Secretary-Treasurer.

39. Incumbants International President O'Callaghan, International Vice President Caldwell, and International Secretary-Treasurer Lowen* were nominated at the nominating convention for re-election to their respective offices.

40. Lloyd W. Sheldon and Robert Boyle Wright were also nominated and ran for International President. George Vance and Amos E. Koonce were also nominated and ran for International Executive Vice President. Charles O. Norstrand

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* Lowen was an incumbant by virtue of appointment following his predecessor's death.

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and George H. Balser were also nominated and ran for International Secretary-Treasurer.

41. Those nominated for Offshore Division offices, as noted on Exhibits D1-D9, have been listed on Exhibit E annexed hereto. Candidates for Offshore Division Convention Delegates have not been listed inasmuch as they are not officers whose elections are contested in this action.

42. Members of the Offshore Division in good standing were entitled to vote for International Officers in the 1971 election.

(See Exhibits D1-D9)

43. Members of record as of July 1, 1971 in good standing of former Offshore Division Local 14 (comprised of the Ports of Baltimore, Philadelphia, Norfolk, Charleston and Savannah) were entitled to vote for all Port offices for all the Ports in former Local 14.

(See Exhibits D1 and E)

(See Offshore Division By-Laws Article XIX, Section 2(e) - Exhibit B)

44. Members of record as of July 1, 1971 in good standing of former Offshore Division Local 11 (Port of Boston) were entitled to vote for Port offices in former Local 11.

(See Exhibits D2 and E)

45. Members of record as of July 1, 1971 in good standing of former Offshore Division Local 20 (comprised of the Ports of Galveston, Houston and Port Arthur) were entitled to vote for all Port offices for all the Ports in former Local 20.

(See Exhibits D3 and E)

46. Members of record as of July 1, 1971 in good standing of former Offshore Division Local 24 (comprised of

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the Ports of Jacksonville and Hollywood) were entitled to vote for all Port offices for all Ports in former Local 24.

(See Exhibits D4 and E)

47. Members of record as of July 1, 1971 in good standing of former Offshore Division Local 4 (comprised of the Ports of Mobile and Tampa) were entitled to vote for all Port offices for all Ports in former Local 4.

(See Exhibits D5 and E)

48. Members of record as of July 1, 1971 in good standing of former Offshore Division Local 15 (Port of New Orleans) were entitled to vote for all Port offices in former Local 15.

(See Exhibits D6 and E)

49. Members of record as of July 1, 1971 in good standing of former Offshore Division Local 88 (Port of New York) were entitled to vote for all Port offices in former Local 88.

(See Exhibit D7 and E)

50. Members of record as of July 1, 1971 in good standing of former Offshore Division Local 5 (Port of Providence) were entitled to vote for all Port offices in former Local 5.

(See Exhibits D8 and E)

51. Members of record as of July 1, 1971 in good standing of former Offshore Division Local 90 (comprised of the Ports of San Francisco, Seattle, Portland and Wilmington) were entitled to vote for all Port offices for all Ports in former Local 90.

(See Exhibits D9 and E)

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52. Members in good standing of the Inland Locals, except for members of Inland Local 47, were entitled to vote for International officers.

(See Exhibit F1 (orange))

53. Members of the Inland Division voted for International Officers only, during the subject 1971 election.

54. Members in good standing of the Pilots Division were entitled to vote for International officers.

(See Exhibit F2 (green))

55. Members in good standing of the Pilots Division were entitled to vote for Pilots Division Vice President and Regional Representatives. Annexed hereto as Exhibit F2 is a true copy of the ballot sent to said Pilots Division members.

56. International President O'Callaghan ran for election as part of a team.

(See statement under O'Callaghan's name on ballot for International Officers - Exhibits D1-D9)

(See also O'Callaghan Deposition pp. 207-211)

(See also Lowen Deposition, pp. 89-90)

57. International Executive Vice President Caldwell and International Secretary-Treasurer Lowen were part of the O'Callaghan team.

(See statements under Caldwell's and Lowen's names on ballots for International Officers - Exhibits D1-D9)

(See also O'Callaghan Deposition pp. 207 211)

(See also Lowen Deposition, pp. 89-90)

58. All incumbent port officers were part of the

O'Callaghan team.*

(See statements under O'Callaghan's, Caldwell's and Lowen's names on ballot for International Officers - Exhibits D1-D9)

(See also O'Callaghan's Deposition pp. 207-211)

(See Lowen Deposition, pp. 89-90)

(See also Exhibits G, H, I, J and K annexed hereto -- samples of campaign literature sent to various members by O'Callaghan)

(See also Exhibit L, various documents distributed as campaign literature, supplied with Addendum to O'Callaghan Deposition - referring to p. 313 of O'Callaghan Deposition)

59. Sheldon (candidate for International President) Koonce (candidate for International Executive Vice-President) and Norstrand (candidate for International Secretary-Treasurer) ran together as a team and were associated with an organization of IOMM&P members known as Members for a Democratic Union ("MDU"). Annexed as Exhibit MM are samples of MDU campaign literature on which those associated with the MDU are noted. Annexed as Exhibit NN is a sample document circulated by an organization of those belonging to former Local 90 (ports on the West Coast) called the West Coast Mates on which there appears support for Sheldon, Koonce and Norstrand.

(See statements under names of Sheldon, Koonce and Norstrand on ballot for International Officers - Exhibits D1- D9)

(See also O'Callaghan Deposition p. 125)

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* In the Port of Wilmington (in former Local 90) H. Walther was an incumbent inasmuch as he had been Assistant Port Agent and was running for Port Agent. No incumbent was running for Assistant Port Agent, but J. Haring was supported by the O'Callaghan team. J. Haring appears to be the only O'Callaghan team member who did not either win or make it to a run-off.

In the Port of San Francisco (in former Local 90) O. Larson, running for Port Agent, was an incumbent inasmuch as he had been Executive Assistant Port Agent. G. M. Tuttle was an incumbent inasmuch as he had been Assistant Port Agent No. 1 and was running for Executive Port Agent. L. M. Martins was an incumbent inasmuch as he had been an Assistant Port Agent and was running for Assistant Port Agent No. 1. Of the three running for Assistant Port Agent in a race when two could be elected, only one, E. M. Caldwell, an incumbent, had O'Callaghan team support.

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RESULTS OF THE ELECTION

60. Annexed hereto as Exhibit M is a true copy of the Certification of Results of the 1971 election of officers prepared by the AAA and dated January 12, 1972.*

(Admission # 10)

61. As noted on the AAA Certification of Results, ballots were counted on December 22, 1971.

(Certification of Results - Exhibit M)

62. The Certification of Results represents the final results of the elections except for those elections where runoffs were necessary.

(Lowen Deposition, p. 208)

63. Run-offs were necessary for the following positions: Executive Assistant, Port Agent and Dispatcher, San Francisco; Port Agent, Seattle; Port Agent, Portland; Port Agent and Assistant Port Agent, Wilmington.

(Certification of Results, pp. 5 and 6)

64. The AAA, as noted on the Certification of Results, received 5716 ballots.

(Certification of Results, p. 1 - Exhibit L)

65. The American Bank and Trust Company, to whose care the ballots had been sent, noted it had received for the AAA 5736 ballots.**

66. Annexed hereto as Exhibit N is a running tally of ballots received by the American Bank and Trust. A copy was also supplied by the IOMM&P as Exhibit G to Addendum to O'Callaghan Deposition in response to questions on p. 262 of the O'Callaghan Deposition.

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* Hereafter referred to as "Certification of Results".

** The difference of 20 ballots between the AAA count and the American Bank and Trust tally is not significant for the purposes of this motion.

67. Annexed hereto as Exhibit O is a letter from the American Bank and Trust Company to the AAA explaining that Exhibit M (tally) noting a total of 6347 ballots received was excessive by 611, leaving a balance of 5736.

68. By comparing Exhibit N to Exhibit O it is apparent the American Bank and Trust misread its own tally record and erroneously added an extra 600 ballots on December 6, 1971. Instead of adding 39 ballots they added 639. On December 6, 1971 an additional 10 ballots were erroneously added. Instead of adding 40 ballots, they added 50. And on December 20, 1971 an additional one ballot was erroneously added. Instead of adding 2 ballots, they added 3.

69. Annexed hereto as Exhibit P is the Announcement of Election of Officers distributed by the IOMM&P on which is published the names and titles of those elected.

COMPLAINTS BY MEMBERS OF THE IOMM&P

A. Complaints to the Union

70. The conduct of the election was challenged by sixteen IOMM&P members in good standing at various times before, during and after the balloting.*

(Admissions # 13 and # 14)

71. Said sixteen members properly exhausted all available internal remedies pursuant to the IOMM&P Constitution and Offshore Division By-Laws.

(Admission # 27)

(Answers to Interrogatories 78)

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* The sixteen members include: Lloyd Sheldon, Amos Koonce, Charles Norstrand, Charles A. Hemming, Lawrence A. Burlingame, Henry L. Mereaux, John A. Moralis, Jr., John Seybert, Victor Soto, Walter J. Anderson, Robert McAlvanah, Nicholas L. LaRocca, Cornelius P. Coyle, George Vance, Jack Ofelt, Jr., and Ashley N. Gordon.

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72. Annexed hereto as Exhibits Q, R, S, T, U and V are true copies of various documents wherein said members, individually or through their attorney, Burton H. Hall, directed complaints to the IOMM&P's International Ballot Committee ("IBC") about various aspects of the conduct of the election.

(Admissions ## 18, 19, 20, 21, 22 and 23)

73. By letter dated January 7, 1972, from Robert Lowen, International Secretary-Treasurer for the IBC to Burton Hall, complainants were advised that appeals from the IBC rulings were to be made to the IOMM&P s General Executive Board. A true copy of said letter is annexed hereto as Exhibit W.

(Admission # 24)

74. On January 19, 1972, Burton Hall on behalf of the complaining IOMM&P members addressed a letter of protest to the General Executive Board in care of Robert Lowen, International Secretary-Treasurer, IOMM&P. A true copy of said letter is annexed hereto as Exhibit X.

(Admission # 25)

75. Annexed hereto as Exhibit Y is a true copy of an undated letter postmarked February 29, 1972, from Captain Lowen, International Secretary-Treasurer, to Burton H. Hall wherein complainants were advised the General Executive Board had denied their appeals.

(Admission # 26)

B. Complaints to the Secretary of Labor

76. a) On March 29, 1972, complainants through their attorney, Burton H. Hall, filed their complaint with the Secretary of Labor.

(Complaint, ¶ VII)

(Answers to Interrogatories, ¶ 35)

b) Burton H. Hall received on March 2, 1971 the letter from Captain Lowen postmarked February 29, 1971 which letter is annexed as Exhibit Y.

(See Exhibit Z, annexed hereto)

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77. The complaint to the Secretary embodied the complaints as set forth in the January 19, 1972, letter of Burton H. Hall to the General Executive Board, see Exhibit X.

78. Annexed hereto as Exhibit Z is said letter of March 29, 1972, from Burton H. Hall to the Secretary of Labor.

79. The United States Department of Labor conducted an investigation into the complaints lodged with the Secretary.

(Complaint, ¶ VIII)

(Answer, ¶ 8)

80. The IOMM&P extended the Department of Labor's time in which to file an action contesting the 1971 election by a series of waivers, the last of which extended the Department's time to file until December 28, 1972. Annexed hereto as Exhibit AA is a copy of the last waiver submitted to the Secretary by Marvin Schwartz, IOMM&P International Counsel.

81. The Secretary of Labor, by the United States Attorney for the Southern District of New York commenced this action by the filing of a complaint on November 28, 1972.

(Complaint)

FACTS RELATING TO VIOLATIONS

A. "Newsletter"

82. Annexed hereto as Exhibit BB is a true copy of the IOMM&P publication entitled "60th Convention Newsletter on the Resolution of Affiliation of the IOMM&P with the ILA" (hereafter the "Newsletter") which was prepared and mailed by the IOMM&P to each of its members, on or about August 19, 1971.

(Admission #28)

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83. The cost of the preparation, duplication and distribution of the Newsletter was paid for with monies received by the IOMM&P by way of dues, assessments or similar levy.

(Admission #29)

84. The IOMM&P expended more than $3000 for the preparation, duplication and distribution of the Newsletter*.

85. The Newsletter was distributed to approximately 10,400 members using addresses on file at the International Headquarters on a computerized list.

(Answers to Interrogatories, ¶18(a) and (b))

86. On September 16, 1971 Llyod Sheldon (candidate for International President), Amos Koonce (candidate for International Executive Vice-President) and Victor Soto (candidate for Assistant Port Agent for the Port of New York) brought an action against the IOMM&P's International officers in the United States District Court for the Southern District of New York. (71 Civ. 4113).

87. Plaintiffs in that action which was heard by the Honorable Thomas F. Croake, United States District Judge for the Southern District of New York, alleged, inter alia, that the Newsletter was campaign literature prepared and distributed at the expense of the defendant IOMM&P and that with respect to the plaintiffs this denied them the right to have campaign literature equally distributed in violation of 29 U.S.C. §481(c). Sheldon v. O'Callaghan, 335 F.Supp. 325, 326 (S.D.N.Y., 1971).

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* Throughout it has been admitted that the incumbent International Officers of the IOMM&P used union funds to prepare, duplicate and distribute this document. Although it has no bearing on the issue before this Court, it is noted that the amount defendant admits to spending varies: approximately $1,356.00 is admitted to in Admission #30. Answers to Interrogatories ¶17 admits spending $3,369.60 and the Addendum to O'Callaghan Deposition, in response to questions on p. 171, admits to spending $3,218.60. The only relevant point is that union funds were spent.

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88. In his decision dated October 18, 1971 the Honorable Thomas F. Croake, United States District Judge for the Southern District of New York found the "'Newsletter', containing electioneering for the incumbent candidate, ad hominem, attacks upon an opposition candidate, coupled with the timing of the distribution, to constitute campaign literature for defendant O'Callaghan, distributed at the expense of defendant labor organization"* (at p. 327). Annexed as Exhibit CC, is a copy of Judge Croake's decision.

89. On November 4, 1971, Judge Croake, consistent with his October 18, 1971 decision, ordered the IOMM&P to publish and distribute literature submitted by the plaintiffs in that action in a manner similar to the publication and distribution given the Newsletter, with equal force and with equal treatment as to the expense of such distribution. Annexed as Exhibit DD is a copy of Judge Croake's November 4, 1971 Order.

90. Judge Croake denied a motion to restrain the mailing of ballots which plaintiff sought to ensure their material would be received by members in advance of the ballots. In doing so however, the Judge commented as follows:

> "A preliminary injunction is an extraordinary remedy granted, in the court's discretion, upon a clear demonstration of both probable success and irreparable injury. (Citations omitted.) The IMRDA provides for post-election remedies, so as to prevent blocking or delaying of Union elections while affording adequate relief through enforcement by the Secretary of Labor if 'upon a preponderance of the evidence after a trial upon the merits, the cout finds . . . (2) that

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* In footnotes 1 and 2, Judge Croake inserts in his opinion some of the offensive language.

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> the violation of section 481 of this title may have affected the outcome of an election'." IMRDA §482(c). "The intent of Congress in establishing . . . post election remedies was to allow the labor organization full scope to review its own election after it had taken place, and after many pre-election grievances had resolved themselves by the results of the election." Wirtz v. H.H. Guy Lodge, No. 872 Bro. of Railroad Trainmen, 279 F.Supp. 873, 874 (W.D. Pa. 1967). The plaintiffs have not met their burden of showing irreparable injury in light of the enforcement procedures within §482 LMRDA and based upon the information submitted.

91. Pursuant to Judge Croake's order, plaintiff Sheldon submitted literature to the AAA sometime after Judge Croake's November 4, 1971 Order and shortly before November 9, 1971.

(Admitted in Addendum to O'Callaghan Deposition in response to questions on pp. 175-176)

92. The AAA mailed Sheldon's literature shortly after November 9, 1971. Annexed hereto as Exhibit OO is a copy of said literature mailed by the AAA for Sheldon.

(Admitted in Addendum to O'Callaghan Deposition in response to questions on pp. 175-176 which refers to Exhibit B thereto.)

(Admission #79 admits mailing subsequent to November 1, 1971.)

93. By the time Sheldon's literature was mailed out by the AAA, approximately 3000 to 4000 ballots had been cast and returned.

(This has been stipulated - see Addendum to O'Callaghan Deposition in response to questions on p. 262 and Exhibit G thereto.)

94. As noted on Exhibit N (tally kept by American Bank and Trust) 3980 ballots had been received by November 9, 1971. As noted in paragraph 68 any error in computation came after this date.

Ballotting Procedure

95. Each member in good standing of the IOMM&P was sent a ballot, a white envelope with only the words "Secret

Ballot" printed on the front, and a return envelope used to mail back the ballot. Said members received ballots on which they could vote for International officers and if appropriate for their respective Port (or former Local) officers (see Exhibits D1 - D9).

96. Once a member marked his ballot he was to put it inside the white envelope and seal that envelop. He was then to insert that sealed white envelope into the return envelope (which was pre-addressed to the AAA in care of the American Bank and Trust Co., 301 East Fordham Road, Bronx, New York 10458) print his name, social security number, subordinate body affiliation, and home address and sign his name on the upper left hand corner of said return envelope and then mail it.

97. Said return envelopes had printed on the lower left hand corner of the front side numbers which matched the "control" numbers the AAA had secretly assigned to the members.

98. These return envelopes had been preserved by the AAA and were recently turned over to the United States Attorney for the Southern District of New York pursuant to subpoena.

99. Annexed hereto as Exhibit EE is an affidavit of Brian P. O'Hanlon, a Compliance Officer with the New York Area Office - Labor Management Services Administration, an agency within the United States Department of Labor.

100. Mr. O'Hanlon explains the ballotting procedure, further noting how the numbers printed on the return envelopes were associated to numerical sequences assigned to Ports.

101. By examining the postmarks on the return envelopes and the numbers printed on the lower left hand

corner, one is able to discern how many ballots from members in particular Ports were mailed by particular dates.

102. Annexed to the O'Hanlon Affidavit, Exhibitt EE, is a chart ("Chart") which compares the number of members voting by certain particular dates to the outcome, as taken from the AAA Certification of Results (Exhibit M), of each election in the Offshore Division Ports (and former Locals).

B. "Eleven Pledges"

103. Annexed hereto as Exhibit FF is a true copy of a four page IOMM&P publication entitled "All Constitutional Amendments and Resolutions of the 60th Convention Ratified - Affiliation of IOMM&P as the International Maritime Division of the ILA (AFL-CIO) Affirmed" which was prepared and mailed by defendant IOMM&P to each of its members on or about November 26, 1971.

(Admission #31)

104. The third page of said document, Exhibit FF, contained a letter from Teddy Gleason, ILA President, and Thomas F. O'Callaghan, President of the IOMM&P pledging their joint effort in eleven areas.*

105. The fourth page of said document, Exhibit FF, included a reminder that December 21, 1971 was the deadline for the AAA to receive ballots cast for the election of officers.

106. The cost of preparation, duplication and distribution of the Eleven Pledges, Exhibit FF, was paid for with monies received by defendant by way of dues, assessment or similar levy.

(Admission # 32)

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* Hereafter this document, Exhibit FF, shall be referred to as the "Eleven Pledges".

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107. The cost of the preparation, duplication and distribution was approximately $2,800.*

(Answers to Interrogatories ¶ 19)

108. Eleven Pledges, Exhibit FF, was distributed by mail to approximately 10,400 members using the addresses on file at the IOMM&P's International headquarters on a computerized list.

(Answers to Interrogatories ¶ 20)

109. An examination of the postmarks on the return envelopes disclosed that at least 684 ballots were mailed back to the AAA on or after November 26, 1971.

C. Offshore Division Vice Presidents (Atlantic) and (Gulf)

110. Offshore Division Vice-Presidents are members of the General Executive Board of the IOMM&P.

(Article V, Section 2, IOMM&P Constitution - Exhibit A)

111. In a weighted fashion based on membership the three Offshore Division Vice Presidents cast votes on the General Executive Board.

(Article VII, Section 2, IOMM&P Constitution - Exhibit A)

112. The General Executive Board on which the three Offshore Division Vice Presidents serve, have certain duties and authorities as set forth in Article VII, Section 3 of the IOMM&P Constitution.

(See IOMM&P Constitution - Exhibit A)

113. The three Offshore Division Vice Presidents also have duties and authorities as set forth in Article VI, Section 3 and 4 of the Offshore Division By-Laws.

(The Offshore Division By-Laws - Exhibit B)

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* As with the Newsletter, the actual cost is not important. It is sufficient that the IOMM&P paid whatever the costs were.

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114. Article XIX, Section 2(1) of the Offshore Division By-Laws provides that "for the transitional term of office the New York Port Agent shall also be the Vice President (Atlantic); the San Francisco Port Agent shall also be the Vice President (Pacific) and the Galveston Port Agent shall also be the Vice President (Gulf). For all elective terms of office subsequent to the transitional term (January 1, 1975), Offshore Division Vice Presidents shall be elected in regular election by a majority vote of the membership of the Offshore Division."

(See Article XIX, Section 2(1) Offshore Division By-Laws - Exhibit B)

115. Thus, pursuant to Article XIX, Section 2(1) of the Offshore Division By-Laws, the Port Agents of New York and Galveston, by virtue of their election to these positions, automatically became Vice Presidents of the Atlantic and Gulf regions respectively for the transitional term of office.

(Admission # 34)

116. The Offshore Division's Atlantic area included the Ports of New York (former Local 88) and those Ports in former Local 5 (Port of Providence), former Local 11 (Port of Boston) and former Local 14 (Ports of Baltimore, Philadelphia, Norfolk, Charleston and Savannah)

(See Article IX, Section 1, Offshore Division By-Laws - Exhibit B)

117. There were 1,773 members of former Locals 5, 11 and 14 at the time of the 1971 election of officers.

(Answers to Interrogatories ¶ 21)

118. The Offshore Division's Gulf area included the Ports of Galveston, Houston and Port Arthur (former Local 20) and those Ports in former Local 4 (Ports of Mobile and Tampa), former Local 24 (Ports of Jacksonville and Hollywood) and

former Local 15 (Port of New Orleans).

(See Article IX, Section 1, Offshore Division By-Laws - Exhibit B)

119. There were 985 members of former Locals 4 and 15 at the time of the 1971 election of officers.

(Answers to Interrogatories ¶ 22)

120. There were approximately 236 members of former Local 24 at the time of the 1971 election of officers.

(Pursuant to subpoena the AAA produced, *inter alia*, the list of members of former Local 24, to whom ballots were sent - see O'Hanlon Affidavit, Exhibit EE).

D. Ballots Not Mailed Within 30 Days After Close Of Nominations

121. Nominations for International offices ended July 28, 1971.

(Admission # 63)

122. Nominations for the Offshore Division offices ended no later than July 28, 1971 as well.

123. Nominations for Offshore Division Offices actually ended by June 30, 1971.

(See Article XIX, Section 2(a), Offshore Division By-Laws - Exhibit B)

124. The last sentence of Article V, Section 8(d) of the IOMM&P Constitution reads as follows:

> "All ballots shall be mailed not later than the thirtieth day following the close of the nominating period at which nominations have been made."

(See IOMM&P Constitution - Exhibit A)

125. Ballots for the 1971 election of officers were mailed September 21, 1971.

(Admission #64)

126. Annexed hereto as Exhibit GG is a true copy of an IOMM&P publication entitled "Master, Mate & Pilot". It is the August 1971 edition, Volume 1, No. 2.

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127. "Master, Mate and Pilot", Exhibit GG, was prepared by the IOMM&P and distributed by the IOMM&P to its members.

(Addendum to O'Callaghan Deposition - Part II, in response to quesions on pp. 86-87)

(O'Callaghan Deposition pp. 86-87)

128. The Total cost of preparation and distribution of "Master, Mate and Pilot", Exhibit GG, was $14,421.87 of which the IOMM&P paid $9,429.75.

(Addendum to O'Callaghan Deposition - Part II, in response to questions on pp. 86-87)

129. "Master, Mate and Pilot", Exhibit GG, had been distributed to its members after the close of the nominations and before the ballots were mailed out.

130. "Master, Mate and Pilot", Exhibit GG, was also alleged by plaintiffs in the aforementioned action brought September 16, 1971 and heard by Judge Croake to be campaign literature distributed discriminatorily by the IOMM&P. Judge Croake did not find this magazine to be campaign literature.

131. On or about August 20, 1971 ballots on the question of the IOMM&P - ILA merger were mailed to IOMM&P members. Said ballots were to be receipted by and were counted on November 23, 1971.

(See front page of Eleven Pledges - Exhibit FF)

E. Local 88 Membership List Not Provided to Candidates

132. Article XIX Section 1 of the Offshore Division By-Laws provides:

> The provisions of these By-Laws shall become effective January 1, 1972 unless otherwise provided. The provisions of prior Offshore Local Constitutions or By-Laws shall be null and void as of December 31, 1971 except as outlined below [in Section 2 and 3].

(See Offshore Division By-Laws, Exhibit B)

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133. Article XIX, Section 2(b) of the Offshore Division By-Laws provides:

> Except as specifically provided by Convention action and membership referendum, the existing election procedures of the respective Offshore Locals in effect as of October 1, 1970 shall be followed.

(See Offshore Division By-Laws - Exhibit B)

134. Annexed hereto as Exhibit HH is a true copy of By-Laws of Local 88 of the IOMM&P as adopted by membership referendum July 6, 1961.

(Admission # 65)

135. Article V, Section 5 of the Local 88 By-Laws, Exhibit HH, states:

> A certified mailing list of all members of Local 88 shall be made available at cost to all candidates, provided however that any postage charges shall not be billed to this organization.

136. No "Convention action and membership referendum" as referred to in Article XIX, Section 2(b) of the Offshore Division By-Laws (paragraph 133 *supra*) was taken to pre-empt or otherwise vary the election procedure set forth in Article V, Section 5 of the Local 88 By-Laws (paragraph 55 *supra*).

137. On August 30, 1971 the IOMM&P International Ballot Committee denied the request of certain Local 88 (Port of New York) candidates for certified copies of the Local 88 mailing list.

(See Admission #16 - p. 34 of the Exhibit F annexed thereto)

138. Plaintiffs, in the aforementioned action before Judge Croake (71 Civ. 4113), alleged also that they had been denied proper access to former Local 88 mailing list of members and sought a certified copy thereof. *Sheldon v. O'Callaghan*, 335 F. Supp. 325, 326 (S.D.N.Y. 1971) - Exhibit CC.

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139. In his decision of October 18, 1971 Judge Croake stated with respect to this issue:

> The facts, as presented by plaintiffs and not disputed by defendants, display a violation of the spirit of LMRDA as well as the letter of that law. The LMRDA endeavors to preserve the integrity of the election process as it is the core of Union democracy. Section 481(e) LMRDA provides: "The election shall be conducted in accordance with the constitution and by-laws of such organization in so far as they are not inconsistent with the provisions of this subchapter." It appears there is "discrimination ... against ... [a] candidate with respect to the use of lists of members." Section 481(c) LMRDA. Defendants are directed, therefore, to make the mailing lists available to candidates for election to office in former Local 88. Sheldon v. O'Callaghan, at 329.

140. November 4, 1971 Judge Croake ordered the IOMM&P "to make available to candidates for election to office in the former Local 88 or New York Branch. . . certified mailing lists of all members of the said former Local 88, at cost."

(See November 4, 1971 Order of Judge Croake - Exhibit DD)

141. Marvin Schwartz, as attorney for Defendant IOMM&P in Sheldon v. O'Callaghan, moved to reargue Judge Croake's decision with respect to that portion ordering former Local 88 certified mailing list be made available.

142. Judge Croake signed an endorsement, annexed as Exhibit EE, on said motion to reargue which read as follows:

> The defendant International Organization of Masters, Mates, and Pilots, AFL-CIO, moves for reargument. The memorandum decision of this court, dated October 18, 1971, in part, directs defendants to make available to candidates for office in the former local 88 certified copies of the mailing list of members pursuant to the Labor-Management Reporting and Disclosure Act § 481(c)(e).

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Defendant now seeks, in his moving papers, relief from a remedy which was not granted. The court has not been requested in the complaint, nor has it ever ordered that plaintiff obtain "physical possession of mailing lists." This new issue is not properly presented in this motion for reargument.

The motion to reargue is granted. Upon a review of all the circumstances, including the many letters with enclosures submitted by the parties, the decision of this court, dated October 18, 1971, is adhered to.

SO ORDERED

Dated: New York, N.Y.
November 15, 1971

s/
THOMAS F. CROAKE
U. S. D. J.

143. By November 15, 1971 the American Bank and Trust had received 4245 ballots.

(See Exhibit N).

144. On December 3, 1972 Marvin Schwartz on behalf of Defendants O'Callaghan, Caldwell and Lowen and the IOMM&P appealed from Judge Croake's November 4, 1971 order. Annexed as Exhibit JJ is a copy of that Notice of Appeal.

145. On December 8, 1972 Marvin Schwartz also filed a Notice of Appeal annexed hereto as Exhibit KK, appealing from Judge Croake's November 15, 1971 endorsement.

146. On July 11, 1972 the parties to that action before Judge Croake stipulated to discontinue the appeals. Annexed as Exhibit LL is a copy of said Stipulation of Discontinuance.

147. No candidate, whose request for a copy of the Local 88 membership list was denied by the IOMM&P International Ballot Committee on August 30, 1971 (See ¶137), was provided with a copy of said list subsequent to Judge Croake's

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November 15, 1971 endorsement order and prior to December 22, 1971.

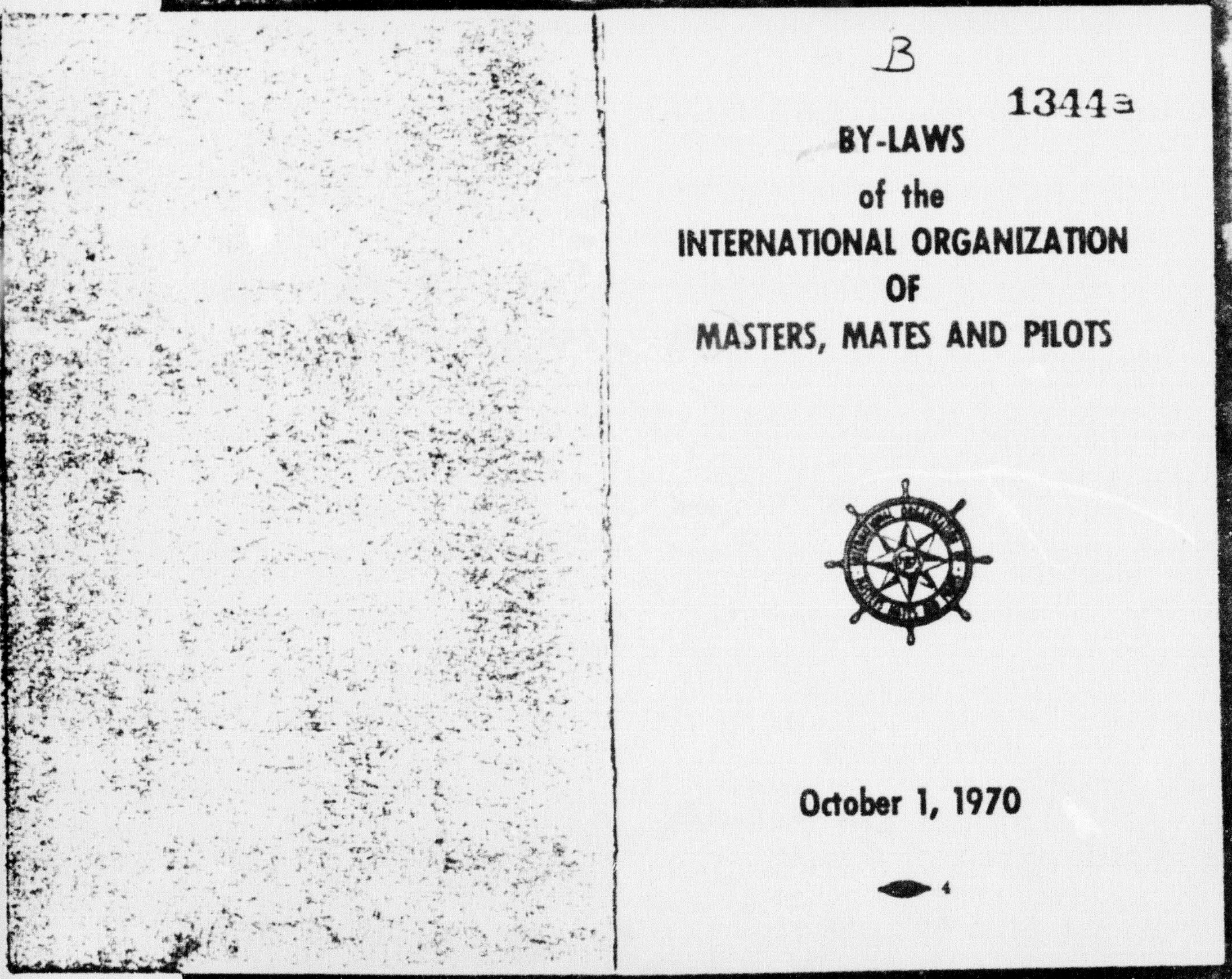
Dated: New York, New York

December 13, 1974

Respectfully submitted,

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for Plaintiff

By: Dennison Young Jr.
DENNISON YOUNG, JR.
Assistant United States Attorney



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BY-LAWS
of the
INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS

October 1, 1970

BY-LAWS OF THE OFFSHORE DIVISION

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BY-LAWS OF THE OFFSHORE DIVISION

PREAMBLE

We, the members of the International Organization of Masters, Mates and Pilots, for the safeguarding of democratic procedures and the rights of the membership in an organization predominantly seafaring and for the promotion and improvement of our economic welfare and professional standards that the best interests of the membership may be better served, do hereby adopt these By-Laws of the Offshore Division.

ARTICLE I

AUTHORITY OF THE MEMBERSHIP

Full and final authority of the Offshore Division shall reside in the membership. This authority shall be delegated or exercised by the membership at regular or special meetings, or when properly initiated by membership referendum. In between referenda or meetings or at other times when the membership cannot exercise their authority as provided herein, this authority shall be exercised by the Offshore Division Executive Council or by the duly elected officials. Nothing in these By-Laws shall be construed as removing the full and final authority of the membership.

Any Article or Section within these By-Laws that is in direct conflict with any State or Federal Law shall be inoperative, but the same shall not void this instrument in its entirety.

This body shall be known as the International Organization of Masters, Mates and Pilots—Offshore Division. It shall be referred to in these By-Laws as the "Offshore Division".

ARTICLE II

ELIGIBILITY FOR MEMBERSHIP

Section 1

a) Persons eligible for membership in this Organization shall possess a valid United States Coast Guard Merchant Marine Officer's license,

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certificate, or other evidence of professional capability.

b) No applicant may be admitted to membership and no member may be permitted to transfer from another subordinate body unless the ratio of members in the Offshore Division, to the number of jobs under Offshore Division contracts, is less than 1.5 to 1. When such conditions exist first all members wishing to transfer from other subordinate bodies of the International may be admitted. Then applicants may be considered for membership. The ratio described herein shall be subject to annual review and may be amended by the General Executive Board.

c) Membership in the Offshore Division shall be subject to the provisions of the International Constitution.

d) Applicants can only ship when no member is available, and remain on board for one voyage only, but in no event longer than ninety days.

Section 2

The Offshore Division Executive Council may create a special unit for persons receiving retirement benefits from any retirement program negotiated by, or administered by, the Organization.

ARTICLE III
ELECTIVE OFFICERS AND TENURE

Section 1

a) The elective officers of the Offshore Division shall consist of: International President; International Executive Vice President; International Secretary-Treasurer; Vice-President (Atlantic); Vice President (Pacific); Vice President (Gulf), and the officers listed in (b) below.

b) Offshore Ports shall be classified on the basis of requirements of service to the membership. Initial Port classifications shall not be downgraded for a minimum period of five (5) years following the adoption of these By-Laws. There shall be elected Port Agents and/or Executive Assistant Port Agents and/or Assistant Port Agents in the following locations:

BOSTON
PROVIDENCE
NEW YORK
PHILADELPHIA
BALTIMORE
NORFOLK
JACKSONVILLE
MOBILE
NEW ORLEANS
GALVESTON
HOUSTON
PORT ARTHUR
WILMINGTON (CALIFORNIA)
SAN FRANCISCO
PORTLAND
SEATTLE

c) Field Representatives shall be elected initially for the following locations:

CORPUS CHRISTI
CHARLESTON
HONOLULU
SAVANNAH
SOUTHEAST FLORIDA
TAMPA
PUERTO RICO

d) Additions to the Ports or reclassification of Port listed in (b) and (c) above shall be determined by the Offshore Division Executive Council.

Section 2

The term of each office shall be three (3) years or until a successor is elected.

ARTICLE IV
MINIMUM QUALIFICATIONS FOR ALL CANDIDATES

Section 1

No member shall be a candidate for office unless, at the time of nomination:

a) he has been a member of the Offshore Division for at least four (4) years, two of which shall be immediately prior to the nomination; and

b) he is a member in good standing as provided in Article III, Section 4 of the International Constitution.

Section 2

The licenses or certificates of all candidates shall be valid.

Section 3

Nominees shall be men of good moral character. They shall not have been convicted of a felony within the last five years prior to their nomination,

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nor have ever been found guilty by a court, union tribunal or the membership of an offense involving union trust such as offering a bribe to a union official, accepting a bribe as a union official, or conspiring to subvert the union contract.

Section 4

No member may be a candidate for more than one paid elective office in any election.

Section 5

No candidate may be an active member of another union without the express consent of the General Executive Board of the Organization. He shall submit an affidavit attesting that he is not in violation of this provision.

Section 6

All provisions of these By-Laws relating to election processes and the positions of officers and representatives as defined and enumerated herein shall be effective for the term of office commencing January 1, 1972.

ARTICLE V
NOMINATIONS AND ELECTION OF OFFICERS

Section 1

Nomination of officers of the Offshore Division, except the International President, International Executive Vice President, and International Secretary-Treasurer, shall be made during the month of June of each election year. Nominations shall be made by any member in good standing and shall be signed by at least two members in good standing. Nominations shall be in writing* and be forwarded to the International Secretary-Treasurer. The International Secretary-Treasurer shall prepare a list of all nominees. This list shall be given the fullest publicity which shall include its posting in the offices and meeting rooms of the Offshore Division.

Section 2

Only those candidates who shall have notified the International Secretary-Treasurer, in writing, within ten (10) days after the close of the nominating period that they will accept the nomination, shall have their names placed on the ballot. The acceptance shall include a certification that he is not prevented from holding office by any provision of the Labor-Management Reporting and Disclosure Act of 1959 or by any provision of these By-Laws or the International Constitution.

The International Secretary-Treasurer shall prepare a list of all acceptances and this list shall be given the fullest publicity which shall include its posting in the offices and meeting rooms of the Offshore Division.

Section 3

The International Ballot Committee, elected in accordance with the International Constitution, shall supervise the election of officers of the Offshore Division. The election shall be conducted by the Impartial Balloting Agency selected by the Convention subject to the same rules and conditions outlined in the International Constitution for International elections, except as specifically provided for in these By-Laws.

Section 4

There shall be a minimum of a ninety (90) day voting period for the election of officers simultaneous with election of International Officers. At the outset of and during the said election period, each candidate shall be allowed equal space in the Organization's official publication to present his qualifications, views, and photograph subject to reasonable rules uniformly imposed by the General Executive Board.

The newly-elected officials shall take office on January 1.

ARTICLE VI
DUTIES OF OFFICERS

Section 1

International President — The International

---

* Shall include telegraph, radiogram or similar communications.

President shall be the Executive Officer of this Division and shall, with the complete assistance of all members of the Offshore Division Executive Council, enforce the International Constitution and these By-Laws. He shall enforce all provisions of the Offshore collective bargaining agreements and shall act as Chairman of the Negotiating Committee, or designate a Chairman. He shall settle, if possible, all disputes, interpretations, grievances or complaints arising over such enforcement, or lack thereof. In assuming those responsibilities, the International Secretary-Treasurer, the International Executive Vice President, the Vice Presidents, the Port Agents and Assistant Port Agents shall function under his direct supervision and orders. He shall have the right to attend and express his views at any meetings. It shall be the explicit responsibility of the International President not only to enforce the Shipping Rules fully and equitably, but also to provide for the proper maintenance of all shipping records. He shall employ such administrative and professional personnel as are needed to effectively operate the Offshore Division.

He shall be a Delegate to all Conventions of the International Organization of Masters, Mates and Pilots. He shall, as Executive Officer of this Organization, be an ex-officio member of all committees of the International Organization. When available, he may chair any membership meeting.

Section 2

International Executive Vice President—It shall be the duty of the International Executive Vice President to assist the International President in the discharge of his duties, as outlined in Section 1 of this Article, and such other duties as the Organization may require. The International Executive Vice President shall act for the International President when the latter is not able to perform the duties of his office.

Section 3

International Secretary-Treasurer—The International Secretary-Treasurer shall receive all monies payable to the Offshore Division and issue official receipts for same either directly or through its authorized officers. He shall be responsible for all records, any bonds, or any other finances or properties belonging to the Offshore Division. All financial records and accounts shall be kept in accordance with accepted accounting procedures. They shall be subject to an annual audit by a Certified Public Accountant. The annual financial reports shall be published in the Organization's official publication. He shall sign all checks in payment of the Offshore Division's obligations. He shall pay the salaries of employees of the Division and shall reimburse them for properly documented expenses. In the absence of the International Secretary-Treasurer, which will include vacation, sick leave, leave of absence or any leave where during such period he relinquishes his duties, the International President, or the International Executive Vice President, or the Offshore Division Vice President, in that order, shall have authority to sign checks and carry out his duties.

He shall keep on file the original proceedings of all regular and special membership meetings and those of the Offshore Division Executive Council. He shall have posted the true copies of Executive Council minutes on the bulletin boards in the meeting rooms of the Offshore Division not less than twenty-four hours prior to the next membership meeting. He shall issue all applicant cards, membership books, retired member cards (if any), transfers, and withdrawal cards. He shall, at the expiration of his term of office, or earlier if recalled, surrender to his successor all books, papers, funds and any and all properties belonging to the Offshore Division.

Section 4

Vice President—The Vice Presidents shall coordinate the activities of the Port Agents, Executive Assistant Port Agents, and Assistant Port Agents under their direction and shall perform such specific duties as are assigned to them by the International President. They shall take appropriate action to assure that members are informed of Union affairs, that vessels are properly manned, that disputes are settled and that the collective bargaining agreements are effectively and uniformly enforced. They may act as the Chairman at a membership meeting in any Port under their supervision.

Section 5

Port Agents, Executive Assistant Port Agents and Assistant Port Agents—Port Agents, Executive Assistant Port Agents and Assistant Port Agents shall be responsible for the efficient and orderly conducting of business at the port office to which they are elected. Port Agents, Executive Assistant Port Agents and Assistant Port Agents shall perform other duties required by the Vice President for the area.

ARTICLE VII
SALARIES OF ELECTED OFFICERS

Section 1

The salaries and benefits of elected Officers of the Division shall be determined by the membership of the Offshore Division.

Section 2

Officers shall receive reimbursement for reasonable expenses incurred in performing their duties. Such reimbursement shall be made upon submission of application or completion of procedures which shall be determined by the International Secretary-Treasurer after consultation with the Division's Certified Public Accountant.

Section 3

All paid elected officials shall be bonded according to the provisions of the Federal Law. The premium thereon shall be paid by this Division.

Section 4

During their terms of office, elected officers shall not be registered on the shipping lists nor shall they be employed on any vessel without approval of the Offshore Division Executive Council.

ARTICLE VIII
MEMBERSHIP MEETINGS

Section 1

The regular meetings of this Division must be held in all major Ports on the second Wednesday of each month at 1400 or, if a job call occurs at 1400, immediately after the job call. Should any of these meetings be a holiday, the meeting shall convene the next day at the regular time.

Section 2

Special meetings may be called on forty-eight hours advance notice (Saturdays, Sundays and holidays excluded), in any Port by the International President or by a majority vote of the Offshore Division Executive Council. Notice of a special meeting and its stated purpose shall be posted on the Organization's bulletin boards and all contracted ships in port alerted. No other business than that for which the meeting was called shall be transacted.

Section 3

At all meetings not less than twenty-five percent (25%) of the membership registered for shipping, with a minimum of fifteen members, shall constitute a quorum for the transaction of business.

Section 4

At regular or special membership meetings, the Port Agent shall be Chairman. In the absence of the Port Agent, another elected official shall be designated Chairman.

ARTICLE IX
OFFSHORE DIVISION EXECUTIVE COUNCIL

Section 1. Composition

The Offshore Division Executive Council shall be composed of the following elected officers:

- International President
- International Executive Vice President
- International Secretary-Treasurer
- Vice President—(Atlantic)
- Vice President—(Pacific)

Vice President—(Gulf)

Port Agents from the following Ports:

Atlantic Coast—Encompassing area from Canadian-Maine border to and including Savannah, Georgia. The ports in this area are:

- Boston
- Providence
- New York
- Philadelphia
- Baltimore
- Norfolk

Gulf Coast—From south of Savannah to Mexican border including Brownsville, Texas. The ports in this area are:

- Jacksonville
- Mobile
- New Orleans
- Galveston
- Houston
- Port Arthur

Pacific Coast—From Mexican border to Canadian border, including Alaska, Hawaiian Islands and the Philippines.

- Wilmington, California
- San Francisco
- Portland, Oregon
- Seattle

Section 2. Meetings and Authority

a) The International President shall be Chairman of the Offshore Division Executive Council. The Council shall convene on the call of the International President or by request of a majority of its members. The time, date and place of the meeting shall be determined by the party calling for the meeting. There shall be at least one meeting of the Council each calendar year. A majority of the Council members shall constitute a quorum.

b) The Offshore Division Executive Council shall have the authority to consider and act on any and all matters affecting the Offshore Division.

ARTICLE X
COMMITTEES

Section 1. Membership Committee

A Membership Committee shall be established by the Offshore Division Executive Council and shall consider any and all applicants for membership and transfers. Rules and procedures for the operation of the Committee shall be developed by the Executive Council.

Section 2. Strike Committees

A Strike Committee of a minimum of three members in each port shall be elected at regular or special membership meetings whenever the circumstances warrant. This committee shall elect its own Chairman. Such committee shall coordinate its functions with the Negotiating Committee and the regularly elected Officers. It shall be its duty to establish picket lines and otherwise make the strike complete and effective. Picket cards shall be issued and complete and accurate records maintained.

Section 3. Negotiating Committee

A Negotiating Committee consisting of the International President, International Executive Vice President, International Secretary-Treasurer, the Vice Presidents, twelve members from the Atlantic Coast, eight members from the Gulf Coast and eight members from the Pacific Coast, shall prepare contract demands and approve tentative settlements of any contracts affecting the Offshore Division. The Negotiating Committee by its majority vote shall have the authority to call a strike against an Employer or Employers. A majority vote of this Committee shall be required before a proposed contract is presented to the membership in referendum ballot, for ratification.

ARTICLE XI
INCOME AND ASSETS

Section 1

The income of this Division shall include initiation fees, dues, assessments, interest on bonds, stocks, bank deposits, service fees, and money received from any other source.

Section 2

Effective October 1, 1970 the dues for members shall be $75.00 per quarter. Dues to be payable quarterly, semi-annually or annually in advance. From this amount the necessary International

Dues shall be paid to the International Organization. Also effective October 1, 1970, applicants awaiting membership in this Division shall pay a service fee of $75.00 per quarter, payable in advance. An amount equal to the current International Dues shall be deducted from the service fee and forwarded to the International Organization.

a) The initiation fee for an applicant who had an original license issued less than one year prior to the date of application, military service excluded, shall be $1,000.

b) The initiation fee for an applicant who has had an original license for one year or over but less than five years as of the date of his application, military service excluded, shall be $2,000.

c) The initiation fee for an applicant who has had any license five years or over from the date of issue of the original license to the date of application, military service excluded, shall be $3,000.

d) Effective January 1, 1972, all initiation fees received by the Division shall be paid to the International Organization as they are received.

e) For matters not specifically covered in this Section 3, applicants shall be covered by the applicable provisions of the International Constitution.

ARTICLE XII
CONVENTION DELEGATES

Section 1

Nominations and election of Delegates and Alternates to the International Convention shall take place at the same time and in the same manner as provided for other elected officers.

Section 2

The International President, International Executive Vice President, International Secretary-Treasurer, and Offshore Division Vice Presidents shall be Convention delegates by virtue of their office. All other delegates shall also be elected by secret referendum ballot in accordance with the International Constitution.

ARTICLE XIII
RESIGNATIONS, VACANCIES AND BY-ELECTIONS

Section 1

Any officer of this Division, providing no charges of violating his oath of office or illegally using such office for personal gain are pending against him, may resign from office. Such resignation shall be dated and shall be presented in writing to the International President or International Secretary-Treasurer.

Section 2

If a vacancy in any elective Offshore Division office occurs by death, resignation or otherwise where the unexpired term is less than two years, it shall be filled pro tem by the Offshore Division Executive Council until the next election.

Section 3

Filling a vacancy in any elected office for an unexpired term in excess of two years shall be determined by a referendum election. Nominations for such unexpired term shall follow the procedure outlined for regular nomination for officers. The ballot shall be prepared and the referendum conducted in the same manner as the regular election of officers. The interval between the vacancy and the completion of the referendum election shall be filled as mentioned in Section 2 of this Article.

ARTICLE XIV
TRANSFERS, AND TERMINATIONS OF MEMBERSHIP

Section 1. Transfer to Another Subordinate Body

a) A member may transfer to another subordinate body of the Organization only with the approval of that subordinate body.

b) Until the member is accepted by another subordinate body he shall remain a member of the Offshore Division and shall continue to fulfill all his obligations to the Offshore Division.

c) No member shall be eligible for transfer out of the Offshore Division unless he is square on the books, and no money paid in advance shall be refunded or transferred.

d) No transfer shall be granted during any general strike, lockout or work stoppage.

Section 2. Transferring Into the Division

a) Members may transfer into the Offshore Division only with the consent of the Membership Committee. Transfers will be considered by the Membership Committee only if there are membership vacancies as described in Article II, Section 1 (b) of these By-Laws. In such event the Membership Committee will act on the transfer and, if approved, the member shall be admitted and declared a member of the Offshore Division.

b) Any member of another subordinate body of the Organization whose application for transfer of membership is approved on or after October 1, 1970 must also pay the difference in the amount of the initiation fee he had paid and the then current Offshore Division initiation fee.

Section 3. Termination of Membership

a) Any member of the Offshore Division may be issued a withdrawal card. Such requests must be in writing. Members issued withdrawal cards shall sever all relationship with the Offshore Division and if they wish later to rejoin the Organization they shall be treated as any new applicant.

b) If a member loses membership for non-payment of dues he may only regain his membership in the manner of any new applicant.

Section 4. Active Duty in Armed Forces

Any member who is in good standing at the time he is drafted for active duty in the Armed Forces, shall be relieved of the responsibility of paying dues for the period he is involuntarily retained in the Armed Forces. However, he shall keep the International Secretary-Treasurer advised of his military status and his legal address and maintain communication with the Division.

Any member who volunteers, enlists, or re-enlists after being drafted, shall not be relieved of the responsibility of paying dues. Such a member must, if he wishes to remain a member in good standing, continue to pay his dues, or he shall terminate membership.

Section 5. Membership Card and Book

a) Members shall be issued membership cards or books. Applicants may be issued Applicant Cards. Retired members may be issued special identification forms.

b) Any member who is expelled, suspended, withdrawn or transferred from this Division must deposit his membership card with the International Secretary-Treasurer.

ARTICLE XV
RECALL OR SUSPENSION OF OFFICERS

Section 1

Any elected officer of this Division may be recalled by a secret majority referendum vote of the Division's membership. Such a referendum may be initiated by a two-thirds (⅔) majority vote of the Offshore Division Executive Council or by a petition signed by twenty-five percent (25%) of the members in good standing.

Section 2

During the secret referendum referred to in Section 1 above, the elected official may be suspended under such conditions and circumstances as the Offshore Division Executive Council may determine, by its two-thirds (⅔) majority vote.

Section 3

If the majority of the membership vote is to recall the elected officer, he shall thereupon be removed from office and all salary and benefits shall immediately terminate.

If the majority of the membership vote against the recall of the elected officer, he shall be cleared of all charges and fully restored to his office.

Section 4

An impartial balloting agency shall conduct all referenda required by this Article.

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ARTICLE XVI
MISCONDUCT AND TRIAL PROCEDURE

Section 1. Basis for Charges

The basis for charges against any member of the Offshore Division shall be as follows:

a) Violation of any provision of the International Constitution or these By-Laws.

b) Disobedience of any reasonable regulation, rules, orders, mandates of the International or the Offshore Division.

c) Violation of the oath of loyalty to the Division or to the International.

d) Abuse of fellow members by libelous or slanderous communications.

e) Secession or fostering same.

Section 2. Place of Trial

Any member of the Organization whose acts form the basis for charges as set forth in Section 1 above, shall be tried in the Port in which he is or was last registered.

Section 3. The Form of Charges

When charges are made against any member of the Division, the following requirements must be met:

a) The charges must be written and presented to the International Secretary-Treasurer.

b) The charges must include the approximate time and place of the offense committed.

c) The charges must be signed by the complainant.

d) A copy of the charges shall be furnished to the accused by personal service or by registered letter to his last known address.

In addition, a copy of the charges shall be posted on the bulletin board in the Port Office.

e) Any member against whom charges have been made may plead guilty to one or more of the charges. In the event a member does plead guilty, his plea of guilty must be accompanied by a written waiver of his rights under this Section, and shall also state that he authorizes the Trial Committee to assess a fine or impose discipline without his presence.

Section 4. Selection of the Trial Committee

When charges against a member of the Division are properly preferred, a Trial Committee shall be selected at the first regular membership meeting in the Port where the charges are made after the charges have been served. However, if the Offshore Division Executive Board by its majority vote, believes that the charges are entirely without merit, the charges shall be dismissed forthwith.

a) When the Accused is Present:

The presiding officer at the meeting shall draw seven names. If any member declines to serve on the Trial Committee another name shall be drawn. The accused member and the charging member shall each have the right to strike four names. The first three of the names remaining shall constitute the Trial Committee, two of which shall constitute a quorum.

b) When the Accused is Not Present:

When charges are properly made against any member of the Division and are properly served against the member of the Organization, and when said member is not present when the Trial Committee is selected, the procedure shall be as follows:

The accused may designate any person to act as his representative and in such event, the procedure for the selection of the Trial Committee shall be the same as if the accused was present. In the absence of such designated representative for the accused, the presiding officer at the meeting shall draw seven names. If any member declines to serve on the Trial Committee, another name shall be drawn. These seven names shall constitute the Trial Committee, five of whom shall constitute a quorum.

If the quorum for a Port's regular meeting is less than twenty, the presiding officer shall draw five names. If any member declines to serve on the

Trial Committee, another name shall be drawn. These five names shall constitute the Trial Committee, three of which shall constitute a quorum.

Section 5. Trial Committee Procedure

a) By majority vote the Trial Committee may apply to the national headquarters of the AFL-CIO for the designation of the impartial chairman who shall be without vote and whose responsibility shall be to conduct the trial in a fair and impartial manner.

b) The Trial Committee shall not convene until the accused has a reasonable opportunity to prepare his case.

c) The accused may be represented by counsel of his choice and a written record shall be made of all testimony and documents submitted at the hearing.

d) The accused shall be afforded a full and fair hearing which shall include the right to call witnesses on his own behalf and to cross-examine any adverse witness.

e) In the event the accused member does not appear after he has been given a reasonable time to prepare his defense, the Trial Committee shall proceed with the trial and a written record shall be made of all the testimony and documents submitted at the hearing.

f) The Trial Committee shall render its findings and judgment in writing to the members at a regular meeting.

g) The decisions and penalties that the Trial Committee may impose may consist of reprimands, fines, suspensions, revocation of certain privileges of membership, and expulsion.

Section 6. Appeals

a) The written record of the testimony before the Trial Committee and the documents submitted to the Trial Committee shall be kept on file by the International Secretary-Treasurer for the purpose of appeals.

b) All appeals must be taken within fifteen days from the date of the findings of the Trial Committee were presented to the regular meeting. The appellant shall mail a written notice of appeal to the International Secretary-Treasurer and the notice shall clearly state that an appeal is being taken from the particular decision in the particular case.

c) Pending any appeal, the decision appealed from shall remain in full force and effect unless otherwise decided by a majority vote of the Offshore Division Executive Council.

d) Appeals shall be made to (1) the Offshore Division Executive Council; and (2) the General Executive Board; and (3) the International Convention.

e) The date when an appeal will be considered by any of the above appellant bodies may be fixed by it, and notice of the date shall be served personally or by registered mail on the accused.

f) The accused shall be accorded the right to appear before the appellate body and present argument on the case.

g) In the discretion of the body hearing the appeal, appeals shall be heard either on the record made before the Trial Committee or by a hearing.

ARTICLE XVII
RULES OF ORDER

The following Rules of Order will be utilized at all regular membership meetings:

1) Call to order by the Chairman
2) Roll call of officers
3) Reading minutes of last meeting
4) Admission of new members
5) Reports of officers
6) Reports of Committees
7) Unfinished Business
8) Good and Welfare
9) New Business
10) Adjournment

Where not otherwise provided for in these By-Laws, Roberts' Rules of Order shall prevail.

ARTICLE XVIII
AMENDMENTS TO BY-LAWS

Section 1

These By-Laws may be amended by a secret majority referendum vote of the Division's membership.

Proposed amendments may be submitted to such membership vote by either a majority vote of the Offshore Division Executive Council or by a petition signed by fifteen percent (15%) of the Division's members in good standing.

Section 2

An impartial balloting agency shall conduct all referenda required by this Article.

ARTICLE XIX
EFFECTIVE DATE, INTERIM MEASURES

Section 1

The provisions of these By-Laws shall become effective January 1, 1972 unless otherwise provided. The provisions of prior Offshore Local Constitutions or By-Laws shall be null and void as of December 31, 1971 except as outlined below.

Section 2

In order to accomplish an orderly transition to a national division structure and during the change preserving democratic and historical methods of conducting business the following procedures shall apply:

a) All elective offices of the Offshore Division shall be open for nominations during the month of June, 1971. An election shall be held simultaneously with the election of International Officers. Only those candidates who have notified the Secretary-Treasurer of their Local, in writing, within ten (10) days of the close of the nominating period, that they will accept the nomination, shall have their names placed on the ballot. Prior to July 1, 1971 each Local shall elect a Ballot Committee which shall certify the eligibility of each accepting candidate, to the International Secretary-Treasurer. Upon certification by the independent balloting agency the new officers shall assume office January 1, 1972 and shall hold such office for a three-year term or until their successors are elected.

b) Except as specifically provided by Convention action and membership referendum, the existing election procedures of the respective Offshore Locals in effect as of October 1, 1970 shall be followed.

c) Candidates for elections to the respective Port Official offices shall be restricted to the members of record of the Local as of July 1, 1971 for the 1971 election.

d) Nominations for such elected Officials shall be restricted to the members of record of the Local as of July 1, 1971 for the 1971 election.

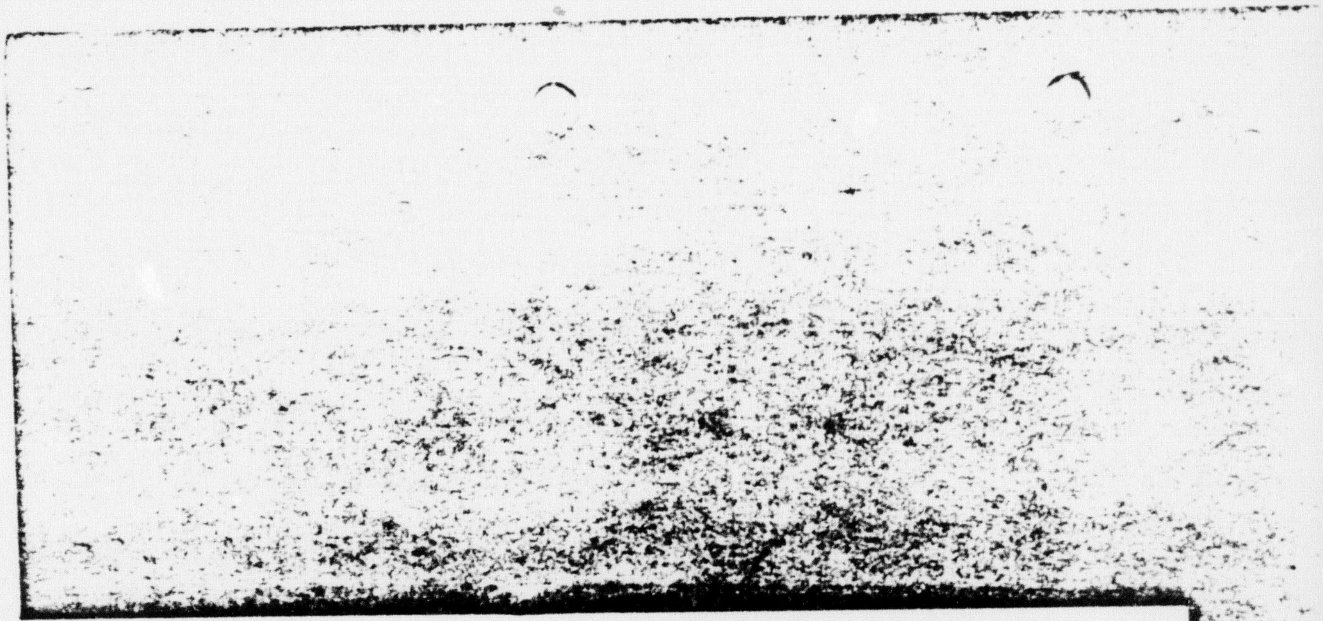
e) Voting for such elected officials shall be restricted to the members of record of the Local as of July 1, 1971 for the 1971 election.

f) Field Representatives—Initially, Field Representatives are designated to cover persons formerly representing the Organization in outports of Locals. For the time being, such Field Representatives shall be designated in the same fashion as provided under the existing procedures of any former Local which so employs them.

g) There shall be no reduction of any existing staff or any existing benefits in any Port. By staff is meant all personnel employed in the operation of any former Local including attorneys, accountants, etc.

h) Offshore Ports shall be classified on the basis of requirements of service to the membership. Initial Port classifications shall not be downgraded for a minimum period of five years following the consolidation of the Locals but may be upgraded by action of the International Subcommittee based upon increased service requirements to the membership.

i) For the transitional term of office, the New York Port Agent shall also be the Vice President



(Atlantic); the San Francisco Port Agent shall also be the Vice President (Pacific) and the Galveston Port Agent shall also be the Vice President (Gulf). For all elective terms of office subsequent to the transitional term (January 1, 1975), Offshore Division Vice Presidents shall be elected in regular election by a majority vote of the membership of the Offshore Division.

j) All initiation fees and dues for the Offshore Division shall be remitted to the International Organization and the International Office will pay all expenses for the Offshore Division. Adequate time will be allowed for former Locals to clear up their monetary affairs and the remission of monies from the former Locals to the International Organization may not be required to commence prior to January 1, 1972.

k) The number of personnel, the level of services, and the individual port facilities in existence at the time of consolidation shall be maintained.

l) Local's assets shall remain with the membership of the Local.

m) Not later than January 1, 1972 the International shall establish and maintain a revolving fund in each Port where such has been the practice. The level at which the revolving fund must be maintained in what was formerly the Local Headquarters port shall be sufficient to cover the following: The equivalent of not less than three months' salaries and sufficient funds to pay incidental expenses. Salary checks shall be issued through the office of the Port Agent (formerly Executive Officer of the Local) and shall be issued in accordance with the past practice of the Local on a weekly, semi-monthly or monthly basis.

n) Unless otherwise determined by the membership of the former Local, the present location of any building owned by a Local shall remain in that same location. The Offshore Division shall pay an adequate rental to the owner or "membership corporation" to cover the operating expenses of the building for the space occupied by the Offshore Division. The Offshore Division shall honor all existing leases, leaseholds and contracts.

o) Effective October 1, 1970 the titles and duties of the officers of former Offshore Locals shall be changed to those outlined in these By-Laws. Regular elections shall be held as required by the Constitutions or By-Laws of former Offshore Locals unless changed by these By-Laws; until the election of all officers required in subsection (a) of this Section 2. No person elected by the membership of former Local shall receive compensation or benefits less than those which would have been paid during his term in Local Office, if he is not re-elected in the election required in subsection (a).

Section 3

During this transition to a national division structure, the officials of the Offshore Locals shall maintain the traditional high standards of fiduciary responsibility. Therefore, any By-Law changes affecting terms of office, salaries or benefits of officers or any liabilities that are initiated or incurred after the 1970 New Orleans Constitutional Convention adopted the new International Constitution, shall in no way obligate this Offshore Division unless specifically approved by its Executive Council.

However, the salaries and benefits of elected officers and employees of the Division shall be in accordance with the duties and responsibilities of their office. It is recognized that certain inequities may exist at the time of adoption of these By-Laws. Such inequities shall be eliminated by the Offshore Division Executive Council, and thereafter submitted to the Division's membership for ratification.

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ELECTION DEPARTMENT

In the matter of:

INTERNATIONAL ORGANIZATION OF MASTERS,
MATES AND PILOTS, AFL-CIO

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CERTIFICATION OF RESULTS

Pursuant to a letter of authorization dated August 24, 1971 from Captain Robert J. Lowen, International Secretary-Treasurer, International Organization of Masters, Mates and Pilots, AFL-CIO, hereinafter referred to as the Union, the American Arbitration Association, hereinafter referred to as the Administrator, agreed to conduct, under its Election Standards and the Constitution of the International, an election of officers among members of the Union.

Ballots were mailed to ten thousand four hundred and forty seven (10,447) members of the Union on September 21, 1971. Deadline for receipt of ballots was midnight, December 21, 1971.

The Administrator duly designated the undersigned to supervise and preside over the counting of the ballots and to issue a certification of the results thereof.

The count took place on December 22, 1971 at the office of the Administrator in the presence of the Ballot Committee, Candidates or their observers.

Of the five thousand seven hundred and sixteen (5,716) ballots received by the Administrator, 863 were not opened and counted for the following reasons:

9	No identification on return envelope
4	No signature on return envelope
4	Duplicates
90	Ineligible
748	No postmark on return envelope (challenged)
2	Received from same voter postmarked at identical hour and date.
6	Issued to other voter

Secrecy of the ballot was maintained at all times.

Results are certified to be as follows:

INTERNATIONAL PRESIDENT

	OFFSHORE	OTHER	TOTAL
ROBERT BOYLE WRIGHT	795	141	936
LLOYD W..SHELDON	1460	191	1651
THOMAS F. O'CALLAGHAN	1665	396	2061
INTERNATIONAL EXECUTIVE VICE PRESIDENT			
GEORGE VANCE	745	134	879
WILLIAM H. CALDWELL	1883	416	2299
AMOS E. KOONCE	1365	178	1543

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INTERNATIONAL SECRETARY-TREASURER	OFFSHORE	OTHER	TOTAL
ROBERT J. LOWEN	1938	405	2343
GEORGE H. BALSER	724	130	854
CHARLES O. NORSTRAND	1328	191	1519

PORTS OF BALTIMORE, PHILADELPHIA, NORFOLK, CHARLESTON AND SAVANNAH

PORT AGENT (BALTIMORE) AND CONVENTION DELEGATE

M. WEINSTEIN	508

EXECUTIVE ASSISTANT PORT AGENT (BALTIMORE)

CHARLES M. SNOW	510

ASSISTANT PORT AGENT (BALTIMORE) - VOTE FOR ONE

JAMES R. SILVER	404
J. Q. CONRAD	228

PORT AGENT (PHILADELPHIA)

John J. Handley	515

PORT AGENT (NORFOLK)

WILLIAM K. BEACH	514

FIELD REPRESENTATIVE (CHARLESTON)

DAVID MCLEAN	497

FIELD REPRESENTATIVE (SAVANNAH) - VOTE FOR ONE

HOWARD H. WILLIAMS	430
ALMON H. WILLIAMS	136

CANDIDATES FOR CONVENTION DELEGATE - VOTE FOR FOUR

THOMAS F. O'CALLAGHAN	373
JAMES R. SILVER	466
JOHN J. HANDLEY	504
WILLIAM K. BEACH	471
HOWARD H. WILLIAMS	345

PORT OF BOSTON

PORT AGENT - VOTE FOR ONE

GEORGE E. LANDRIGAN	26
PATRICK J. CONNOLLY	10
PATRICK J. KING	57

ASSISTANT PORT AGENT

FRANK C. FLAHERTY	85

CANDIDATES FOR CONVENTION DELEGATE - VOTE FOR TWO

WILLIAM H. DOHERTY	28
PATRICK J. KING	55
PATRICK J. CONNOLLY	29
FRANK C. FLAHERTY	54

VICE PRESIDENT, OFFSHORE DIVISION (Gulf)
PORT AGENT (GALVESTON) AND CONVENTION DELEGATE

VOTE FOR ONE

ROBERT JONES	260
ASHLEY N. GORDON	176
BLANK	6

EXECUTIVE ASSISTANT PORT AGENT (GALVESTON)

CHARLES D. CONNALLY	384
BLANK	58

PORT AGENT (HOUSTON)

REUBEN H. McLAURIN	87
ROBERT N. POLUMBO	304
PAUL WILKINS	45
BLANK	6

ASSISTANT PORT AGENT (HOUSTON)

THOMAS D. NEUMANN	311
ROBERT C. CHAMBERLIN	121
BLANK	10

PORT AGENT (PORT ARTHUR)

PATRICK J. DOHERTY	65
JAMES R. GIBLIN	283
WILLIAM B. McNEAL	85
BLANK	9

CANDIDATES FOR CONVENTION DELEGATE - GALVESTON

CHARLES D. CONNALLY	176
JAMES R. GIBLIN	152
THOMAS D. NEUMANN	123
FRANCIS V. BEECHINOR	75
ROBERT N. POLUMBO	209
THEODORE J. TEDDLIE	109

PORTS-OF-JACKSONVILLE-AND-HOLLYWOOD-(Southeast Florida)

PORT AGENT (JACKSONVILLE) AND CONVENTION DELEGATE - VOTE FOR ONE

ROBERT MACALVANAH	20
ALLEN C. SCOTT	102

FIELD REPRESENTATIVE (SOUTHEAST FLORIDA) - VOTE FOR ONE

JAMES T. RUSSELL	7
JOHN W. BROWN	16
GREGORY J. HATCH	8
A. J. (TERRY) MURPHY	84

CANDIDATE FOR CONVENTION DELEGATE

FRANK PAUL	115

CANDIDATES FOR ALTERNATE CONVENTION DELEGATE - VOTE FOR ONE

FLOYD HEFNER	98
JACOB SPIEGEL	18

PORTS OF MOBILE AND TAMPA

PORT AGENT (MOBILE)AND VONVENTION DELEGATE

FRANCIS E. KYSER	167

FIELD REPRESENTATIVE (TAMPA) - VOTE FOR ONE

JAMES S. PURDY	35
JOSEPH A. STANLEY	100
J. R. (JIM) HOLLAND	21
GEORGE F. CLARKE	25

CANDIDATES FOR CONVENTION DELEGATE - VOTE FOR ONE

JAMES S. PURDY	21
JOSEPH A. STANLEY	75
WALTER J. ANDERSON	60
GEORGE E. ODOM	22
VOID	1

PORT OF NEW ORLEANS

PORT AGENT - VOTE FOR ONE

NICHOLAS L. LAROCCA	63
HENRY M. STEGALL	208

EXECUTIVE ASSISTANT PORT AGENT - VOTE FOR ONE

CORNELIUS F. COYLE	57
RICHARD M. CASSELBERRY	213

ASSISTANT PORT AGENT

A. REID, JR.	222

CANDIDATES FOR CONVENTION DELEGATE - VOTE FOR FIVE

CORNELIUS F. COYLE	117
JOSE MORALES	213
RICHARD M. CASSELBERRY	244
H. J. LANDRY	234
A. REID, JR.	193
MICHAEL E. PSCENICKA	110
HENRY M. STEGALL	211

PORT OF NEW YORK

VICE PRESIDENT, OFFSHORE DIVISION (Atlantic) PORT AGENT AND CONVENTION DELEGATE - VOTE FOR ONE

CHARLES A. HEMMING	469
JOSEPH B. GAIER	478

EXECUTIVE ASSISTANT PORT AGENT - VOTE FOR ONE

FRANK T. SCAVO	514
JAMES J. CLIFFORD	424

ASSISTANT PORT AGENT NO. 1 - VOTE FOR ONE

LAWRENCE A. BURLINGAME	452
RICHARD J. POLACHEK	489

ASSISTANT PORT AGENTS - VOTE FOR FOUR

KENNETH E. FOWLER	445
JAMES C. WHITE	433
ERNEST K. SWANSON	131
HENRY L. (HANK) NEREAUX	384
VICTOR SOTO	281
WILLIAM R. SORRENTINO	143
JOHN ADAM MORALIS, JR.	253
RUDIGER K. E. LEHMANN	80
JOHN R. SEYBERT	352
JAMES E. CORNEILLE, JR.	409

JAMES T. BRADY	141
ERNEST J. HENDRY	556
FRANK W. CAREY, JR.	86

CANDIDATES FOR CONVENTION DELEGATE - VOTE FOR FOUR

LAWRENCE A. BURLINGAME	351
VICTOR SOTO	274
HENRY L. (HANK) NEREAUX	319
JAMES C. WHITE	366
RICHARD J. POLACHEK	400
JAMES E. CORNEILLE, JR.	342
ERNEST J. HENDRY	487
JAMES J. CLIFFORD	257
FRANK T. SCAVO	416
WILLIAM R. SORRENTINO	137
CHARLES A. HEMMING	330

CANDIDATE FOR ALTERNATE CONVENTION DELEGATE

JOSEPH WESLEY	610

PORT OF PROVIDENCE

PORT AGENT AND CONVENTION DELEGATE - VOTE FOR ONE

JOHN F. BEIRNE	65
GERALD H. BASSETT	10
BLANK	13

PORTS OF SAN FRANCISCO, SEATTLE,PORTLAND AND WILMINGTON (CALIFORNIA)

VICE PRESIDENT, OFFSHORE DIVISION (Pacific) PORT AGENT (San Francisco) & CONVENTION DELEGATE - VOTE FOR ONE

HARRY FRIEDMAN	262
JACK OFELT, JR.	300
ORION A..LARSON	710

EXECUTIVE ASSISTANT PORT AGENT (SAN FRANCISCO) - VOTE FOR ONE (RUN OFF)

GEORGE M. TUTTLE, JR.	427
RICHARD M. OLSON	141
GEORGE BOMARETO	63
RAYMOND A. WOOD, II	57
VIRGIL G. VALENTINE	557

ASSISTANT PORT AGENT NO. 1 (SAN FRANCISCO) - VOTE FOR ONE

GEORGE A. PERRY	329
LLOYD M. MARTIN	912

ASSISTANT PORT AGENT (SAN FRANCISCO) - VOTE FOR TWO

DAVID F. YORK	659
EDWARD M. CALDWELL	639
MAYER R. ARMBRUST	562

DISPATCHER (SAN FRANCISCO) - VOTE FOR ONE (RUN OFF)

MICHAEL KAY	357
HAROLD E. MANNERING	163
ALBERT E. J. DUGGAN	126
W. C. JACKSON	589

PORT AGENT (SEATTLE) - VOTE FOR ONE (RUN OFF)

ARTHUR E. PIERCE	113
FRANK R. CAIN	209
FLORIN DEMTE	209
R. J. "RUPE" SORIANO	516
JAMES N. HAVERFIELD	195

PORT AGENT (PORTLAND) - VOTE FOR ONE (RUN OFF)

CHARLES W. WALLACE	320
GEORGE P. FOLDEN	124
MAURICE B. SHUMAN	204
D. C. DUNN	101
ROY E. PERRY	254
ARTHUR G. "BUD" MORRISS	131
NORMAN RALPH	79

PORT AGENT (WILMINGTON) - VOTE FOR ONE (RUN OFF)

EDWARD L. WHEELER	82
FRANK BURKE	262
RICHARD T. BARA	283
HENRY C. "HANK" WALTHER	416
GUY M. DUGGAN	88
THEODORE G. ANDERSON	91

ASSISTANT PORT AGENT (WILMINGTON) - VOTE FOR ONE (RUN OFF)

ROBERT L. EDMONDS	111
NICK BARBARA	252
ROBIN A. LINDSAY	51
ARTHUR J. MAEHL	160
W. H. ABBEY	35
WILLIAM "BILL" MOREL	164
FRANK L. ALLEN	160
JOHN HARING	126
JEROME L. SAWYER	177

CANDIDATES FOR CONVENTION DELEGATE - VOTE FOR FOUR

R. J. "RUPE" SORIANO	454
ROBIN A. LINDSAY	73
ALEX PLESHE	112
FRANK L. ALLEN	195
WILLIAM M. CALDWELL	429
EDWARD L. WHEELER	95
THOMAS K. EARLE	74
RICHARD T. BARA	315
HENRY C. "HANK" WALTHER	292
VIRGIL G. VALENTINE	663
CHARLES W. WALLACE	221
JACK H. MAGNUSSON	98
FLORIN DENTE	240
JAMES N. HAVERFIELD	200
MICHAEL KAY	283
GEORGE CHARLOT	102
HARRY FRIEDMAN	259
MAURICE B. SHUMAN	153
W. H. ABBEY	112
WILLIAM "BILL" MOREL	186
EDWARD M. CALDWELL	323

PILOTS DIVISION

INTERNATIONAL PRESIDENT

ROBERT BOYLE WRIGHT	26
LLOYD W. SHELDON	38
THOMAS F. O'CALLAGHAN	126

INTERNATIONAL EXECUTIVE VICE PRESIDENT

GEORGE VANCE	25
WILLIAM M. CALDWELL	130
AMOS E. KOONCE	34

PILOTS DIVISION

INTERNATIONAL SECRETARY-TREASURER

ROBERT J. LOWEN	130
GEORGE H. BALSER	24
CHARLES O. NORSTRAND	32

VICE PRESIDENT AND CONVENTION DELEGATE - VOTE FOR ONE

S. K. SPRADA	148

REGIONAL REPRESENTATIVE (WEST COAST) -VOTE FOR ONE

DONALD S. GRANT	68
FLOYD E. SMITH	92

REGIONAL REPRESENTATIVE (EAST COAST) - VOTE FOR ONE

GRANVILLE I. SMITH	88
JOSEPH J. BRYANT	89

REGIONAL REPRESENTATIVE (GULF COAST) - VOTE FOR ONE

LOUIS E. MILLER	90
RICHARD E. WALTON	60

CANDIDATES FOR CONVENTION DELEGATE - VOTE FOR THREE

FLOYD E. SMITH	119
WILLIAM J. DANIELS, JR.	152
LOUIS E. MILLER	121

INLAND LOCALS

LOCAL 1

INTERNATIONAL PRESIDENT

ROBERT BOULE WRIGHT	2
LLOYD W. SHELDON	1
THOMAS F. O'CALLAGHAN	6

INTERNATIONAL EXECUTIVE VICE PRESIDENT

GEORGE VANCE	3
WILLIAM M. CALDWELL	5
AMOS E. KOONCE	1

INTERNATIONAL SECRETARY-TREASURER

ROBERT J. LOWEN	8
GEORGE H. BALSER	1
CHARLES O. NORSTRAND	0

LOCAL 4

INTERNATIONAL PRESIDENT

ROBERT BOYLE WRIGHT	1
LLOYD W. SHELDON	1
THOMAS F. O'CALLAGHAN	7

INTERNATIONAL EXECUTIVE VICE PRESIDENT

GEORGE VANCE	2
WILLIAM M. CALDWELL	6
AMOS E. KOONCE	1

INLAND LOCALS

LOCAL 4

INTERNATIONAL SECRETARY-TREASURER

ROBERT J. LOWEN	7
GEORGE H. BALSER	2
CHARLES O. NORSTRAND	0

LOCAL 5

INTERNATIONAL PRESIDENT

ROBERT BOYLE WRIGHT	3
LLOYD W. SHELDON	1
THOMAS F. O'CALLAGHAN	13

INTERNATIONAL EXECUTIVE VICE PRESIDENT

GEORGE VANCE	1
WILLIAM M. CALDWELL	14
AMOS E. KOONCE	3

INTERNATIONAL SECRETARY-TREASURER

ROBERT J. LOWEN	13
GEORGE H. BALSER	5
CHARLES O. NORSTRAND	0

LOCAL 6

INTERNATIONAL PRESIDENT

ROBERT BOYLE WRIGHT	49
LLOYD W. SHELDON	75
THOMAS F. O'CALLAGHAN	37

INTERNATIONAL EXECUTIVE VICE PRESIDENT

GEORGE VANCE	45
WILLIAM M. CALDWELL	46
AMOS E. KOONCE	69

INTERNATIONAL SECRETARY-TREASURER

ROBERT J. LOWEN	50
GEORGE H. BALSER	31
CHARLES O. NORSTRAND	81

LOCAL 14

INTERNATIONAL PRESIDENT

ROBERT BOYLE WRIGHT	7
LLOYD W. SHELDON	3
THOMAS F. O'CALLAGHAN	47

INTERNATIONAL EXECUTIVE VICE PRESIDENT

GEORGE VANCE	9
WILLIAM M. CALDWELL	46
AMOS E. KOONCE	2

INTERNATIONAL SECRETARY-TREASURER

ROBERT J. LOWEN	38
GEORGE H. BALSER	13
CHARLES O. NORSTRAND	6

INLAND LOCALS

LOCAL 14

PORTS OF BALTIMORE, PHILADELPHIA, NORFOLK, CHARLESTON and SAVANNAH

PORT AGENT (BALTIMORE) and CONVENTION DELEGATE

M. WEINSTEIN	43

EXECUTIVE ASSISTANT PORT AGENT (BALTIMORE)

CHARLES M. SNOW	42

ASSISTANT PORT AGENT (BALTIMORE)

JAMES R. SILVER	35
J. Q. CONRAD	8

PORT AGENT (PHILADELPHIA)

JOHN J. HANDLEY	37

PORT AGENT (NORFOLK)

WILLIAM K. BEACH	41

FIELD REPRESENTATIVE (CHARLESTON)

DAVID McLEAN	37

FIELD REPRESENTATIVE (SAVANNAH) - Vote for One

HOWARD H. WILLIAMS	33
ALMON H. WILLIAMS	6

CANDIDATES FOR CONVENTION DELEGATE - Vote for Four

Thomas F. O'Callaghan	35
James R. Silver	43
John J. Handley	37
William K. Beach	38
Howard H. Williams	24

LOCAL 17

INTERNATIONAL PRESIDENT

ROBERT BOYLE WRIGHT	16
LLOYD W. SHELDON	10
THOMAS F. O'CALLAGHAN	14

INTERNATIONAL EXECUTIVE VICE PRESIDENT

GEORGE VANCE	9
WILLIAM M. CALDWELL	25
AMOS E. KOONCE	6

INTERNATIONAL SECRETARY-TREASURER

ROBERT J. LOWEN	16
GEORGE H. BALSER	12
CHARLES O. NORSTRAND	12

LOCAL 18

INTERNATIONAL PRESIDENT

ROBERT BOYLE WRIGHT	4
LLOYD W. SHELDON	9
THOMAS F. O'CALLAGHAN	15

INTERNATIONAL EXECUTIVE VICE PRESIDENT

GEORGE VANCE	5
WILLIAM M. CALDWELL	16
AMOS E. KOONCE	

INLAND LOCALS LOCAL 18

INTERNATIONAL SECRETARY-TREASURER

ROBERT J. LOWEN	14
GEORGE H. BALSER	4
CHARLES O. NORSTRAND	10

LOCAL 24

INTERNATIONAL PRESIDENT

ROBERT BOYLE WRIGHT	1
LLOYD W. SHELDON	3
THOMAS F. O'CALLAGHAN	22

INTERNATIONAL EXECUTIVE VICE PRESIDENT

GEORGE VANCE	0
WILLIAM M. CALDWELL	23
AMOS E. KOONCE	4

INTERNATIONAL SECRETARY-TREASURER

ROBERT J. LOWEN	22
GEORGE H. BALSER	1
CHARLES O. NORSTRAND	4

PORTS OF JACKSONVILLE AND HOLLYWOOD (SOUTHEAST FLORIDA)

PORT AGENT (JACKSONVILLE) and CONVENTION DELEGATE

ROBERT MacALVANAH	2
ALLEN C. SCOTT	23

FIELD REPRESENTATIVE (SOUTHEAST FLORIDA)

JAMES T. RUSSELL	3
JOHN W. BROWN	4
GREGORY J. HATCH	00
A.J. (TERRY) MURPHY	17

CANDIDATE FOR CONVENTION DELEGATE

FRANK PAUL	20

CANDIDATES FOR ALTERNATE CONVENTION

FLOYD HEFNER	20
JACOB SPIEGEL	3

LOCAL 27

INTERNATIONAL PRESIDENT

ROBERT BOYLE WRIGHT	2
LLOYD W. SHELDON	3
THOMAS F. O'CALLAGHAN	3

INTERNATIONAL EXECUTIVE VICE PRESIDENT

GEORGE VANCE	3
WILLIAM M. CALDWELL	3
AMOS E. KOONCE	2

INTERNATIONAL SECRETARY-TREASURER

ROBERT J. LOWEN	4
GEORGE H. BALSER	1
CHARLES O. NORSTRAND	3

INLAND LOCALS

LOCAL 30

INTERNATIONAL PRESIDENT

ROBERT BOYLE WRIGHT	15
LLOYD W. SHELDON	26
THOMAS F. O'CALLAGHAN	46

INTERNATIONAL EXECUTIVE VICE PRESIDENT

GEORGE VANCE	21
WILLIAM M. CALDWELL	34
AMOS E. KOONCE	32

INTERNATIONAL SECRETARY-TREASURER

ROBERT J. LOWEN	38
GEORGE H. BALSER	24
CHARLES O. NORSTRAND	24

LOCAL 40

INTERNATIONAL PRESIDENT

ROBERT BOYLE WRIGHT	12
LLOYD W. SHELDON	19
THOMAS F. O'CALLAGHAN	20

INTERNATIONAL EXECUTIVE VICE PRESIDENT

GEORGE VANCE	9
WILLIAM M. CALDWELL	27
AMOS E. KOONCE	15

INTERNATIONAL SECRETARY-TREASURER

ROBERT J. LOWEN	26
GEORGE H. BALSER	10
CHARLES O. NORSTRAND	15

AMW 5

INTERNATIONAL PRESIDENT

ROBERT BOYLE WRIGHT	0
LLOYD W. SHELDON	1
THOMAS F. O'CALLAGHAN	6

INTERNATIONAL EXECUTIVE VICE PRESIDENT

GEORGE VANCE	0
WILLIAM M. CALDWELL	7
AMOS E. KOONCE	0

INTERNATIONAL SECRETARY-TREASURER

ROBERT J. LOWEN	6
GEORGE H. BALSER	0
CHARLES O. NORSTRAND	1

AMW 8

INTERNATIONAL PRESIDENT

ROBERT BOYLE WRIGHT	3
LLOYD W. SHELDON	1
THOMAS F. O'CALLAGHAN	34

INTERNATIONAL EXECUTIVE VICE PRESIDENT

GEORGE VANCE	2
WILLIAM M. CALDWELL	34
AMOS E. KOONCE	2

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INTERNATIONAL SECRETARY-TREASURER

ROBERT J. LOWEN	33
GEORGE H. BALSER	2
CHARLES O. NORSTRAND	3

Lee Epstein

LEE EPSTEIN
ARBITRATOR

DATED: JANUARY 12 1972

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On this 12 day of January,1972 before me personally came and appeared LEE EPSTEIN to me known and known to me to be the individual described in and who executed the foregoing and he acknowledged to me that he executed the same.

Marie Ritz

MARIE RITZ
Notary Public, State of New York
No. 41-3301275 - Queens County
Term Expires March 30, 1973

BURTON H. HALL
ATTORNEY AND COUNSELLOR AT LAW
401 BROADWAY
NEW YORK, N. Y. 10013
431-0114

January 19, 1972

General Executive Board
c/o Robert J. Lowen, Int'l Secretary-Treasurer
Int'l Org'n of Masters, Mates & Pilots
39 Broadway
New York, N.Y., 10006

Dear Sirs:

On behalf of Lloyd Sheldon, Amos Koonce, Charles Norstrand, Charles Hemming, Lawrence Burlingame, Henry Mereaux, John Seybert, Victor Soto, John Morelis, Jack Ofelt, Ashley Gordon, George Vance, Nicholas LaRocca, Cornelius Coyle, Walter Anderson and Robert MacAlvanah, each of them a member of IOMM&P and a candidate for office in the recent election for officers of IOMM&P and its Offshore Division, I appeal from the conduct of the said election and from the violations committed in regard thereto. Specifically, on behalf of each of the persons named above, I appeal from and protest the violations of law, committed in the course of the conduct of the said election, that are specified hereinbelow.

(i) The IOMM&P's incumbent officers, in their official capacities, authorized and directed the printing, publication and distribution at IOMM&P expense, and the use of IOMM&P's mailing lists, of and for campaign literature in aid of the candidacies of the said incumbent officers as candidates for re-election. In particular, three pieces of campaign literature were printed, published and distributed by IOMM&P and at its expense and with the use of IOMM&P's mailing lists: (a) a document entitled "60th Convention Newlsetter on the Resolution of Affiliation of the IOMM&P with the ILA," which was published in late August 1971; (b) a document known as the August 1971 issue of the union's official journal, The Master, Mate & Pilot, which was published late in August or early in September 1971; and a document entitled "International Organization of Masters, Mates and Pilots" and bearing the headlines, "All Constitutional Amendments and Resolutions of the 60th Convention Ratified" and "Affiliation of IOMM&P as the International Marine Division of the ILA (AFL-CIO) Affirmed," which was published in November 1971. All three documents were published as official publications of IOMM&P, at t[redacted] expense of IOMM&P, and with discriminatory use of IOMM&P's mailing lists, with equal opportunity denied other candidates for office for similar publication of their campaign literature and/or similar use of the mailing lists for such publication.

(ii)) The members of Local 47, IOMM&P, approximately 600 in number, were denied the right to vote in the electinn: specifially, no notices of the election were sent to them and no ballots were sent to them, they were given no opportuhity to obtain or to cast ballots, and they were given no reasonable opportunity to nominate candidates.

(iii) The printing of ballots was turned over to a printer in Baltimore who has maintained for many years close business and other ties with incumbent officers, candidates for re-election with the result that the said incumbent officers were given control over the number of ballots printed and access to such ballots.

(iv) Contrary to the resoltion of the IOMM&P Convention providing that AAA should conduct the election and contrary to that provision of the IOMM&P Constitution providing that the balloting agency shall prepare the ballot, the ballot was in fact prepared and printed without the AAA's participation and outside the control of the AAA.

(v) Contrary to Art. V, Section 3(d) of the IOMM&P Constitution, ballots were held back from mailing more than thirday days following the close of the nominating period at which nominations had been made, with the result that incumbent officers, candidates for re-election, were enabled to use the results of the affiliation resolution referendum as an adjunct to their own campaigns for re-election.

(vi) Contrary to the provisions of Art. V, Section 3(f) of the IOMM&P Constitution, the International Ballot Committee and the balloting agency failed and refused to count several hundred ballots that were properly cast and received for either or both of the following reasons: (a) the ballots, though mailed to the bank within the 90-day voting period, were received at the bank after the close of that period and/or (b) the ballots though properly mailed to the bank within the 90-day period were not postmarked on their outer envelopes.

(vii) Contrary to the provisions of the IOMM&P Constitution and OFFshore Division By-Laws which provide that the election be conducted, as regards former local union offices, in accordance with the by-laws of the former local unions, the rights of members of the former local unions were abridged as follows:

(a) the authority of the local memberships and of the local ballot committees over the election of local officers, as provided for by such local by-laws, was usurped by the International Ballot Committee and as a result neither the local memberships nor the local ballot committees were given any role or participation in the election's conduct;

(b) candidates for offices in the New York Branch of the Offshore Division were denied copies of the mailing list of the Branch, despite their requests for the same in accordance with that provision of the by-laws of the former Local 83 which guarantees to any bona fide candidate who requests the same, at cost, a copy of such mailing list; and

(c) contrary to the established election rules of the former Local 88 andof the Local 88 Ballot Committee, no signature check of signatures on the outer ballot envelope was made nor enabled to be made.

(viii) The International Ballot Committee was not in fact impartial or representative of the membership but was partisan in favor of the incumbent candidates for re-election and was selected in such fashion as to make such partisanship inevitable.

(ix) Acting in a manner and for purposes partisan to the incumbent officials, the International Ballot Committee reversed its former position in regard to the counting of non-postmarked ballots after a count of postmakred ballots revealed a slight lead on the part of incumbent officers of the New York Branch and in particular on the part of the New York Port Agent and Vice-President-Atlantic of the Offshore Division; by such reversal of its former position, theInternational Ballot Committee ruled that non-postmarked ballots should not be counted, thereby ensuring the re-election of such incumbent officers.

(x) Candidates for office in ports outside New York and candidates for International Office resident outside New York were denied a reasonable opportunity to examine membership and voters' lists and were denied the right to examine lists of their own local members, all by reason of discriminatory rules adopted by the International Ballot Committee that required them to come to New York City to examine any membership list and which further required them to mail any literature out through New York City rather than through local mailing agencies.

(xi) The official election notices and the ballot itself falsely advised members: (a) that mailings to be sent out in port elections would be sent through local mailing agencies when in factall such mailings were required to be sent from New York City; and (b) that in order to be counted all ballots must be received no later than December 21, 1971, the 90th day of the election period, when in fact the IOMM&P Constitution provides that all ballots mailed during the 90day period should be counted regardless of when they are received.

(xii) No election was held for the office of Field Representative, Puerto Rico, despite the requirements of the Offshore Division Bylaws, Art. XII, Section 1(c).

(xiii) No election was held for the offices of Assistant Executive Officer, Executive Officer and/or Financial Officer of the Offshore Division.

(xiv) Members of Locals 4, 24 and 15 were denied their rights to vote in the election of Vice President-Gulf of the Offshore Division.

(xv) Members of Locals 5, 11 and 14 were denied their rights to vote in the electbn of Vice-President-Atlantic of the Offshore Division.

(xvi) Candidates running as opponents of the incumbat officials were daied discriminatorily the right to inspect and use up-to-date lists of MM&P contract vessels.

(xvii) There were no adequate safeguards to ensure a fair election; in particular:

(a) no signature check ofsignatures on the outer envelopes;

(b) the ballots were sent out to many persons ineligible to vote and, especially as regards ballots received from the Inland locals, the dues standing of vobes was not adequately checked to determine eligibility to vote despite provisions of the IOMM&P Constitution providing therefor;

(b) the ballots were not watermakred or otherwise identified in order to prevent the casting of fraudulent or improper ballots;

(d) no list of members and their dues status was made available to observers to enable them to determine the eligibility of voters to vote;

(e) the agency conducting the election never obtained for use in checking the signatures on the outer envelopes the membership and tranfser applications maintained by the union and its welfare and pension plans;

(f) no check of the eligibility to vote of the persons named on the voters' list was made; and

(g) no list of persons from whom ballots were received was maintained and/or made available for inspection by candidates or observers and the numbers of ballots printed, the number of ballots left over, the number mailed out, the number received, etc., were not made availabele to candidates or observers.

(xviii) Approximately 631 ballots received by the bank have been neither counted nor accounted for; the ballots here referred to are those included in the total of 6347 received by the bank and not included in the total of 5716 accounted for in the balloting agency's certification of the election results.

INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS

AFFILIATED WITH AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS
INTERNATIONAL TRANSPORTWORKERS FEDERATION ⚓ RAILWAY LABOR EXECUTIVES' ASSOCIATION
FOUNDED 1880

THOMAS F. O'CALLAGHAN
INTERNATIONAL PRESIDENT

ROBERT J. LOWEN
SECRETARY-TREASURER

WILLIAM M. CALDWELL
VICE PRESIDENT

39 BROADWAY
NEW YORK, N. Y. 10006
WHITEHALL 4-0508

Cables BRIDGEDECK

CERTIFIED MAIL

Burton M. Hall, Esq.
401 Broadway
New York, New York 10013

Dear Sir:

In response to your letter of January 5th, following are excerpts from the minutes of the IOMM&P General Executive Board meeting of January 25 and 26, 1972, held in San Diego, California:

> (January 25)
> "Item #3 - Appeals - Hold this item in abeyance pending arrival in San Diego of International Counsel Marvin Schwartz."
>
> (January 26 - morning session)
> "Item #3 - Appeals - International Counsel Marvin Schwartz reviewed the International Ballot Committee minutes, including the transcript of the challenges. He also read the different letters of challenge submitted on behalf of various defeated candidates. The minutes, the transcript, and the challenge letters were discussed by the General Executive Board and International Couhsel.
>
> The author of one of the challenge letters indicated his desire to appear personally but he was not present. The General Executive Board instructed International Counsel to contact Mr. Ofelt and advise him that the Board was waiting for him. The Board agreed to withhold decision on the appeals."
>
> (January 26 - afternoon session)
> "Item #3 - Appeals - International Counsel reported that, during his telephonic conversation with Jack Ofelt on this date, Bro. Ofelt stated that he had originally planned to attend the General Executive Board meeting in San Diego, but because of time and weather, decided to convey his appeal to the Board through Counsel Schwartz. Mr. Ofelt repeated his points of challenge listed in his January 20th letter to Counsel Schwartz who, in turn, answered and explained the reasoning behind the action taken by the International Ballot Committee in each of the points challenged. Mr. Ofelt also informed Counsel Schwartz that he was planning a visit with Rolla Johnson of Local 47 to help him challenge the election.

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After careful consideration of all the challenges and the various documents, it was moved, seconded and carried that the appeals be denied."

Very truly yours,

L. Lowen

Captain Robert J. Lowen
International Secretary-Treasurer

RJL:vw

cc: Marvin Schwartz, Esq.

BEST COPY AVAILABLE

Z'

BURTON H. HALL
ATTORNEY AND COUNSELLOR AT LAW
401 BROADWAY
NEW YORK, N. Y. 10013
431-0114

March 29, 1972

James D. Hodgson, U.S. Secretary of Labor
Labor-Management Services Administration
U.S. Department of Labor
233 West 49th Street
New York, N.Y,

Dear Sir:

On behalf of Lloyd Sheldon, Amos Koonce, Charles Norstrand, Charles Hemming, Lawrence Burlingame, Henry Nereaux, John Seybert, Victor Soto, John Moralis, Ashley Gordon, Jack Ofelt, George Vance, Nicholas LaRocca, Cornelius Coyle, Walter Anderson and Robert McAlvannah, I renew and resubmit the election appeals previously submitted by me and, in some cases by them. The bases of these appeals, as indicated in the appeal letters previously submitted by me, are those set forth in the letter from me, on their behalf, to the General Executive Board of the IOMM&P dated January 19, 1972. In addition, Mr. Burlingame has submitted an additional appeal which has ~~withdraw~~ been withdrawn by me; I request that his original letter be re-filed a nd the same is hereby re-submitted by me on his behalf, by reference.

These appeals are submitted as regards the IOMM&P International election and the elections of the various "branches" or locals there identified.

On or about March 2, 1972, I received, under postmark of February 29, 1972, a letter from the IOMM&P International Secretary-Treasurer notifying me that all challenges and appeals from the various elections were denied. We have therefore exhausted all remedies.

Very truly yours,

Burt H Hall

[illegible]

[illegible]

POINT VII

THE SCOPE OF THE SECRETARY'S SUPERVISION OF A COURT ORDERED ELECTION IS VERY BROAD; IT ALLOWS THE SECRETARY TO DIRECT THE UNION TO ABANDON CONSTITUTIONAL PROVISIONS WHICH VIOLATE THE LMRDA, NOTWITHSTANDING THE COURT MAY HAVE DEFERRED CONSIDERATION OF THE IMPROPIETY OF SAID CONSTITUTIONAL PROVISION AS IN THE INSTANT CASE

Once it has been established that a violation of Section 481 may have affected the outcome of an election

> The court shall* declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and by-laws of the labor organization. 29 U.S.C. § 482(c).

Congress was committed to making the Secretary's intervention in union elections, once warranted, effective (Glass Bottle Blowers case at 473) and a supervised election, as we have noted in Point II, supra, is the only way to ensure that the influence of a tainted election may be eliminated. Further, if the Court orders a new supervised election, the order "shall not be stayed pending appeal." 29 U.S.C. § 482(d).

The Secretary's supervisory authority is exceptionally broad and his decisions made in connection therewith must be heeded by the union.

The Court of Appeals for the Seventh Circuit in

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* The Supreme Court twice emphasized the word "shall" in the Glass Bottle Blowers case (389 U.S. at 468 and 474) and indeed such mandate is clear.

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Brennan v. Local 551, United A. A&A Imp. Wkers. of A., Inc., 486 F.2d 6 (7th Cir. 1973) recently addressed itself to the Secretary's election supervisory powers. In holding that the Secretary, and not the union, could determine the date the supervised election was to be conducted, the court stated:

> The order of June 18, 1973, [directing a supervised election] specified a remedy which necessarily involves governmental intervention and supervision of a critical aspect of the union's activities, namely its election process. In order to achieve the purpose of the statute, the Secretary must be afforded a wide range of discretion in discharging his supervisory responsibility. The leadership of the union must respect his authority. at p. 10.

A number of characteristics of the Secretary's supervisory authority emerge from that case:

(1) the determinations and directives of the Secretary must be reasonable and practicable;

(2) the Secretary has a wide range of discretion in his supervision of the court ordered election;

(3) the union leadership must respect the Secretary's authority and must comply with all reasonable directives of the Secretary;

(4) the Secretary, in his supervision of the election, should consult with interested parties, including the incumbent union leadership; such consultation is not in any sense comparable to a negotiation between equal parties; the supervisory decisions are the Secretary's decisions;

(5) the Secretary's supervisory determinations are subject to revision at any time if the Secretary has reasonable grounds for concluding that different determinations are necessary to insure a fair and representative election; in making such determinations, the Secretary should consider various factors, e.g., exspenes, possible impact on impending negotiations, or any other matters that the Secretary, in his impartial expertise, deems relevant;

the weight to be accorded such factors is, in the first instance, for the Secretary to decide;

(6) if the union, the incumbent union leadership, or any other interested party objects to any action taken by the Secretary in his supervisory capacity, that party assumes a heavy burden of persuasion and proof; judicial intervention in advance of the supervised election is appropriate only if the objecting party proves procedural irregularity (such as a complete lack of any opportunity to object or to explain), evidence of bias, or that the Secretary's action is manifestly arbitrary;

(7) the Secretary's supervisory actions must be judged on the basis of the facts available to him when his decisions are made.

Adhering to the guidelines set forth in the _Local 551_ case, _supra_, the Court in _Brennan_ v. _Sindicato Empleados de Equipa Pesado, Etc_, 370 F. Supp. 872 (D.P.R. 1974) went further by saying

> A labor organization _cannot_ refuse to comply with the election supervisor's directives without bringing upon itself the Secretary's refusal to continue conducting an election, or, as in this case, refusing to certify the results of such election. at p. 880.

Included within the Secretary's supervisory authority is the power to determine whether provisions of a union's constitution and/or bylaws then existing are lawful within Section 481 and if not lawful to require the union to discard them in favor of proper substitutes, if appropriate. Section 482(c) of Title 29, specifically states that the new election under the Secretary's supervision is to be conducted "_so far as lawful_ and practicable, in conformity with the constitution and bylaws of the labor organization." (emphasis added.) Once a supervised election is triggered the intention is to ensure as best as possible the new election is conducted fairly and lawfully in all respects, for no other meaning would allow the Secretary's "intervention, once warranted," to be "effective."

The logic of the Sixth Circuit in Hodgson v. Local 1299, United Steelworkers of America, 453 F.2d 565 (6th Cir. 1971) is relevant. There in reversing a District Court's decision to restrict the Secretary's supervision to the balloting aspect of a new election, the Circuit Court found it advisable "to allow the Secretary to supervise the entire election if he deems it necessary." at 577. The Circuit Court said: "Not only would this afford maximum protection to the union members but it would also avoid the multiplicity of litigation that could result from incumbent officers violating a different provision of Section 401 [481 of Title 29, U.S.C.] in each new election." at 577.

Accordingly, the re-run election once ordered is subject to the Secretary's supervision and directives in all respects.

The union in the Schwartz Affidavit, pp. 54-55, suggests this may not be so. Recognizing that a supervised election must be conducted "so far as lawful and practicable, in conformity with the Constitution and By-Laws of the labor organization," the union then posits that any other violation originally alleged by the Secretary as part of his complaint - including the existence of illegal provisions of the union's Constitution and/or By-Laws - must be determined by the Court on this motion for summary judgment or be precluded from the Secretary's subsequent supervision.

The union's misunderstanding of the law is apparent.

All that is required for a supervised re-run election is the existence of one Section 481 violation which may have affected the outcome of the election.*

Once such a violation is found and an election ordered, that new election will be subject to the Secretary's supervision. All this means is that under supervision any procedure the union intends to employ to conduct the re-run election will be subject to the Secretary's direction. If the procedure is improper or unlawful, the Secretary can establish reasonable procedures and/or require that unlawful ones be brought into conformity with the law. This does not mean the Court will still be obliged to review and determine the additionally alleged violations that may have occurred during the improperly conducted election, as defendant otherwise suggests. For the large part these violations become superfluous and decisions thereupon are unnecessary.

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* In view of this point, the Court deferred consideration of the defendant's cross-motion for summary judgment with respect to other violations alleged by the Secretary as perhaps unecessary. See Your Honor's letter of March 3, 1975 to Assistant United States Attorney Dennison Young, Jr.

However, to the extent it can be anticipated these violations - especially those caused by operation of Constitutional and By-Law provisions - would be repeated during the supervised re-run election, they would not be tolerated by the Secretary. The mere fact that the Court is not called upon to determine whether a violation was committed during the earlier election, does not mean the Secretary is precluded from preventing an unlawful practice which would persist during the re-run. Indeed such may be the case in the instant action.*

In his complaint the Secretary questions the scheme embodied in the International Constitution and the Offshore Division's ByLaws whereby the three International officers - who are elected by members of all Divisions in the union - automatically become the three top officers of the Offshore Division without there being a separate election therefor among the members of the Offshore Division only. See Art. IX, Sec. 8, IOMM&P Constitution; Art. V, Sec. 1, Offshore Division By-Laws. As structured by the Offshore Division By-Laws and IOMM&P Constitution these three officers in their capacity as Executive Officer, Assistant Executive Officer and Financial Officer, have significant responsibilities and perform significant duties for the Offshore Division alone (see Offshore Division By-Laws, Art. VI

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* Until the union defies the Secretary's directives during the period of supervision, one cannot say for sure the union's illegal procedures as embodied in its Constitution and By-Laws will definitely continue. That remains to be seen.

Sec. I; Art. VI, Sec. 2; and Art. VI Sec. 3), and their selection should not be imposed on the Offshore Division membership, which may not always have collateral interests. The weighty responsibilities and duties of these officers are accentuated by the union itself (see Schwartz Affidavit, p. 42) when describing how these three International officers actually have a vote on the governing Executive Council of the Offshore Division. The fact that they have any votes at all in that Council's deicisons adds further to their influence.

The election that was conducted among the Offshore Division members specifically did not permit selection of that Division's three top officers. (See Art. V, Sec. 1, Offshore Division By-Laws-specifically precluded nominations for these officers) and any argument that the Offshore Division members participated sufficiently in the selection process through their (nominating, supporting and) voting for International officers simply has no weight. Such argument would be tantamount to suggesting it would be proper for the Governor of New York to assume the role of Mayor of New York City because the people in New York City participated in the Governor's selection. A scheme like this cannot be tolerated.

The defendant union twists and turns to justify this patently undemocratic scheme (Schwartz Affidavit, pp. 40-45).* It cannot do so successfully. By failing to permit members of the Offshore Division to directly nominate, vote for or otherwise support candidates for Offshore Division Executive Officer, Assistant Executive Officer and Financial Officer during the election that was conducted among Offshore Division members, the union committed Section 481(e) violations. That these violations were committed necessary means they "may have affected the outcome of the election". Additionally by failing to conduct an election for these officers "not less often than once every three years" the union violated 481(b) which violation does not require a finding that it may have affected the outcome of the election (see 29 U.S.C. § 482(c)).

The Secretary opted not to move for summary judgment on this issue at this time. It is, of course, reserved in the event a trial is necessary. This does not mean, however, that the scheme will cease to be illegal. The Secretary's judgment is that it is improper and that its continued application in a supervised re-run election would not be "lawful" as mandated in section 482(c). It does mean though that the Court need not decide this issue at this time. Assuming a supervised re-run is ordered, it need not be in issue unless and until the union defied the Secretary's directives with respect to it and until then there is no certainty the union would not abandon these improper Constitutional and By-Law provisions or otherwise come to some arrangement satisfactory to the Secretary.

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* This is one of the violations against which the defendant cross-moved and the consideration of which the Court has deferred. It is also the subject of the subsequent action brought by the Secretary with respect to the 1974 election of officers (75 Civ. 2095 (CBM)).

But there should be no mistake about the fact that a union, once ordered to conduct a re-run election subject to the Secretary's supervision, must abandon unlawful procedures, including those in its charters.

In Hodgson v. Local U. 6799 United Steelworkers of America, 403 U.S. 333 (1971) Justice White in his dissent* stated that with respect to a court ordered supervised election the Secretary "is under no obligation, indeed forbidden, to follow a provision of the bylaws or constitution that is unlawful." p. 343. Mr. Justice White further added, at p. 344: "[I]f the Secretary finds an invalid bylaw that purports to govern a new election that has been validly ordered on a claim that has been exhausted as in this case, the Secretary appears to have express grounds in the Act, independent of the complaint-exhaustion requirements, to insist that the new election be conducted in accordance with the law and to insist that a court adjudicate the matter if the union stands by its bylaw provision."

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* This aspect of Justice White's dissent was not inconsistent with the majority opinion. The majority opinion merely said the initiation of the Secretary's action must be limited to complaints which a complaining member first appealed to his union, unless the particular violation discovered by the Secretary during his investigation was not one that could be discerned by the complaining union member. The majority did not limit the scope of supervision.

Quoting from Mr. Justice White's opinion and a subsequent majority opinion of the Supreme Court,* the Court of Appeals for the District of Columbia in Brennan v. Local Union 639, Int. Bro. of Teamsters, Inc., 494 F.2d 1092 (D.C. Cir. 1974), stated the "The [Supreme] Court has clearly distinguished between a violation as a ground to set aside an election and using a violation with respect to setting the ground rules for a new election which has been ordered." at p. 1099. It then went on to hold that the district court had not erred by directing the union in the course of the new election not to use an invalid bylaw provision, notwithstanding the fact that that violation might not even have constituted a ground to set aside the election in the first instance.

The Secretary has the power in his supervision of the Court ordered election to determine whether the provisions of the union's constitution and bylaws are lawful within section 481, to require that the union abandon or modify those provisions he determines to be violative of the section 481 and, in the event the union refuses to adhere to the Secretary's directives, to seek appropriate judicial assistance or otherwise refuse to continue with the election under supervision.

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*Trobovich v. United Mine Workers, 404 U.S. 527 (1972) wherein the Court strictly limited rights intervenors had to participate in the Secretary's action to set aside the contested election but in a footnote, noted the limitation was not as stringent with respect to assisting the Secretary fashion a suitable remedy once the court ordered a new supervised election.

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CONCLUSION

The Secretary's motion for summary judgment should be granted. The IOMM&P should be ordered to conduct a new election subject to the Secretary's supervision.

Respectfully submitted,

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for Plaintiff

DENNISON YOUNG, JR.
BOBBY C. LAWYER
Assistant United States Attorneys

FRANCIS V. LA RUFFA
Regional Soliciter

RUDOLPH E. DEMEO
Attorney
United States Department of Labor

-Of Counsel-

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES D. HODGSON, Secretary of Labor,
United States Department of Labor,

Plaintiff,

- v -

INTERNATIONAL ORGANIZATION OF MASTERS,
MATES AND PILOTS, INTERNATIONAL
MARITIME DIVISION, ILA, AFL-CIO,

Defendant.

72 Civ. 5031 (CBM)

APPENDIX TO
PLAINTIFF'S REPLY MEMORANDUM

VOL #7-B

59-A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----------------------------------x

JAMES D. HODGSON, Secretary of :
Labor, United States Department
of Labor, :

Plaintiff, : 72 Civ. 5031 (CBM)

-v- :

INTERNATIONAL ORGANIZATION OF :
MASTERS, MATES AND PILOTS,
INTERNATIONAL MARITIME DIVISION, :
ILA, AFL-CIO,
:
Defendant.

-----------------------------------x

APPENDIX
TO ACCOMPANY
PLAINTIFF'S REPLY MEMORANDUM

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INDEX TO APPENDIX

EXHIBIT

A. - Secretary's Analysis of Defendant's Denials Set Forth In Its Statement in Response To The Government's Rule 9(g) Statement.

B. - O'Callaghan Affidavit Submitted to Judge Croake in Oppostion to Preliminary Injunction.

C. - IOMM&P Memorandum Submitted to Judge Croake in Opposition to Preliminary Injunction.

D. - IOMM&P Memorandum Submitted to Judge Croake in Support of Its Motion For Re-Argument.

E. - Plaintiff's Complaint in the Case Before Judge Croake.

F. - IOMM&P's Answer in the Case Before Judge Croake.

G. - October 28, 1971 Letter from IOMM&P to Judge Croake, *inter alia*, Rearguing a Portion of the Judge's October 18, 1971 Decision.

H. - Plaintiff's Memorandum Submitted to Judge Croake in Oppostion to the IOMM&P's Motion to Re-Argue.

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APPENDIX
EXHIBIT A

SECRETARY'S ANALYSIS OF DEFENDANT'S DENIALS SET FORTH IN ITS STATEMENT IN RESPONSE TO THE GOVERNMENT'S RULE 9(g) STATEMENT

PARAGRAPH:

[1. - no response; deemed admitted]

[2. - no response; deemed admitted]

[3. - no response; deemed admitted]

Paragraphs 4 and 6

Defendant's denials are qualified. Plaintiff's paragraph 4 states the IOMM&P is a "labor organization" pursuant to 29 U.S.C. §§ 402(i) and (j) and paragraph 6 states jurisdiction is conferred on the Court pursuant to 29 U.S.C. § 482(b). Defendant's Answer, ¶2, and the Lowen Deposition, pp. 175-179, previously admit the Court's jurisdiction. Defendant's denials in these two paragraphs merely attempt to preserve an affirmative defense that the complainants complaints to the Secretary were not timely filed. In fact the IOMM&P is a "labor organization" (even though this need not be proved further because jurisdiction is admitted and defendant admits the union is subject to section 481) and the complainants complaints were timely filed. This is fully discussed in Point VI of the Government's Reply Memorandum.

[5. - no response; deemed admitted]

[7. - no response; deemed admitted]

[8. - no response; deemed admitted]

[9. - no response; deemed admitted]

[10. - no response; deemed admitted]

[11. - no response; deemed admitted]

[12. - no response; deemed admitted]

[13. - no response; deemed admitted]

Paragraphs 14 and 18

Defendant's denials are virtual admissions. In any event they do not raise any genuine issue as to any material fact, for the facts relating to the establishment of a fully

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formed Inland Division or to the composition of the Pilots Division are not material to the substantive issues of violation of 29 U.S.C. sections 481(g), 481(c), and 481(e). The "Newsletter" and the "Eleven Pledges" were mailed to each of defendant's members (Admissions #'s 28 and 31), irrespective of the member's particular division. The violation of 29 U.S.C. section 481(e) with respect to the offices of Offshore Division Vice-President (Atlantic) and Offshore Division Vice President (Gulf) involved members of only the Offshore Division. The violation of 29 U.S.C. section 481(e) with respect to the failure to mail ballots within the prescribed 30 day period involved ballots to all defendant's members, irrespective of the member's particular division. The violation of 29 U.S.C. section 481(e) with respect to the Local 88 mailing lists involved requests from candidates for office in former Offshore Division Local 88 although the outcome of all contested elections may have been affected as a result of this violation.

[15. - no response; deemed admitted]

[16. - no response; deemed admitted]

Paragraph 17

Defendant's denial of this paragraph is irrelevant for the purposes of the present motion which does not present the issue whether the members of Inland Local 47 were denied the right to vote for International officers in the 1971 election. This issue has been deferred pending the outcome of the present motion.

Paragraph 19

Defendant's denial actually admits the facts merely pointing out a typographical error.

[20. - no response; deemed admitted]

[21. - no response; deemed admitted]

[22. - no response; deemed admitted]

Paragraph 23

Defendant's qualified admission to this paragraph admits the facts stated therein and alleges other facts which are irrelevant to the issues presented by the present motion.

Paragraph 24

Defendant's denial that Nominations for International Officers ended on July 28, 1971 is refuted by defendant's previous admission (Admission # 63). The accompanying papers, furthermore, do not support this denial. See Point V of the Plaintiff's Reply Memorandum.

[25. - no response; deemed admitted]

[26. - no response; deemed admitted]

[27. - no response; deemed admitted]

[28. - no response; deemed admitted]

Paragraph 29

Defendant has previously admitted this identical statement of fact (Answer, ¶6 and Admission, #3). Defendant's qualified denial furthermore taken with defendant's admission of paragraph 36 herein constitute an admission of the facts set forth in this paragraph.

[30. - no response; deemed admitted]

[31. - no response; deemed admitted]

[32. - no response; deemed admitted]

[33. - no response; deemed admitted]

[34. - no response; deemed admitted]

[35. - no response; deemed admitted]

[36. - no response; deemed admitted]

[37. - no response; deemed admitted]

[38. - no response; deemed admitted]

[39. - no response; deemed admitted]

[40. - no response; deemed admitted]

Paragraph 41

Defendant's denial is meaningless and in effect admits the paragraph. Defendant although it has denied certain characterizations and statements appearing on Exhibit E to the Government's Rule 9(g) Statement, has failed to set forth any specific facts which contradict Exhibit E as required by Rule 56(e), Fed. R. Civ. P.

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[42. - no response; deemed admitted]

[43. - no response; deemed admitted]

[44. - no response; deemed admitted]

[45. - no response; deemed admitted]

[46. - no response; deemed admitted]

[47. - no response; deemed admitted]

[48. - no response; deemed admitted]

[49. - no response; deemed admitted]

[50. - no response; deemed admitted]

[51. - no response; deemed admitted]

Paragraph 52

Defendant's denial is irrelevant for the purposes of the present motion which does not present the issue whether the members of Inland Local 47 were denied the right to vote for International officers in the 1971 election. This issue has been deferred pending the outcome of the present motion. The fact that members of Inland Locals, except for those in Local 47, voted for International officers is, of couse, not denied.

[53. - no response; deemed admitted]

[54. - no response; deemed admitted]

[55. - no response; deemed admitted]

[56. - no response; deemed admitted]

[57. - no response; deemed admitted]

[58 - no response; deemed admitted]

[59. - no response; deemed admitted]

[60. - no response; deemed admitted]

[61. - no response; deemed admitted]

Paragraph 62

The statement made in plaintiff's paragraph 62 was previously admitted by defendant (Lowen Deposition, p. 208). The addendum defendant adds to its denial is not material to any genuine issue raised by this present motion.

Paragraph 63

Defendant actually admits the statement made in paragraph 63. The remainder of defendants "denial" is totally irrelevant.

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Paragraph 64

Paragraph 64 merely stated the AAA received 5716 ballots as noted on the AAA's Certification of Results (which was annexed to the Rule 9(g) Statement as Exhibit M and which was admitted to be a true copy in paragraph 60). Defendant's denial on the ground of lack of knowledge fails to set forth specific facts which might raise the slightest question as to the truth of the factual statements contained in the Certification of Results by the AAA -- defendant's own agent. This is just one example of defendant's disingenuous denials.

Paragraphs 65, 66 and 67

These three paragraphs merely recite facts adduced from attached Exhibits. Defendant's denials on the ground of lack of knowledge fail to set forth any facts which might raise the slightest question as to the accuracy of the facts therein. Furthermore there was no denial of the fact that the defendant itself, through O'Callaghan, actually supplied the identical tally of ballots received by the American Bank and Trust, as specifically noted in paragraph 66.

[68. - no response; deemed admitted]

[69. - no response; deemed admitted]

[70. - no response; deemed admitted]

[71. - no response; deemed admitted]

[72. - no response; deemed admitted]

[73. - no response; deemed admitted]

[74. - no response; deemed admitted]

[75. - no response; deemed admitted]

Paragraph 76

This paragraph set forth facts with respect to complainants filing with the Secretary. Defendant's denial of knowledge as to when the complaint was filed is not supported by any facts which raise the slightest question as to the truth of the facts set forth. Furthermore, defendant has previously admitted that the complainants filed their complaint with the Secretary on March 29, 1972 (Answers to Interrogatories, ¶35) and at least even admits here that the "complaint was filed no earlier than March 29, 1972." The thrust of defendant's argument is that the complainants should have filed with the Secretary by February 26, 1972. (Schwartz Affidavit, p. 30.) That argument is fully discounted in Point VI of the Government's Reply Brief.

[77. - no response; deemed admitted]

[78. - no response; deemed admitted]

[79. - no response; deemed admitted]

[80. - no response; deemed admitted]

[81. - no response; deemed admitted]

[82. - no response; deemed admitted]

[83. - no response; deemed admitted]

[84. - no response; deemed admitted]

[85. - no response; deemed admitted]

[86. - no response; deemed admitted]

Paragraphs 87, 88 and 90

These paragraphs merely quote portions of Judge Croake's opinion in *Sheldon v. O'Callaghan*, 335 F. Supp. 325 (S.D.N.Y. 1971). They cannot be denied and in fact defendant fails to deny their factual elements merely referring the Court to its accompanying papers.

Paragraph 89

This paragraph merely recites the terms of Judge Croake's November 4, 1971 Order (Exh. DD to Rule 9(g) Statement). It cannot be denied. Defendant merely refers the Court to its accompanying papers.

[91. - no response; deemed admitted]

[92. - no response; deemed admitted]

[93. - no response; deemed admitted]

Paragraph 94

This paragraph notes the number of ballots returned to the American Bank and Trust by November 9, 1971. Defendant actually admits in its denial that the approximate number recited were so returned. That is all that is crucial for this motion. It is also noted, however, that defendant actually supplied the identical document from which the number was taken as noted in paragraph 66 above.

[95. - no response; deemed admitted]

[96. - no response; deemed admitted]

[97. - no response; deemed admitted]

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Paragraph 98

This paragraph merely notes that the envelops in which ballots were returned to the AAA had been presevered by the AAA and turned over to the United States Attorney pursuant to subpoena. Defendants' denial on the grounds of lack of personal knowledge is inadequate to raise any question as to the accuracy of the paragraph. Furthermore, defendant was on notice of the deposition at which the envelops were turned over to the Government, but it chose not to attend. It cannot now raise any question regarding these envelops which its own agent, the AAA, turned over. Additionally, they are available to the Court.

Paragraph 99

Defendant's denial fails to set forth specific facts which contradict the fact that Exhibit EE to the Secretary's motion is an affidavit of Compliance Officer O'Hanlon. Merely stating defendant has no knowledge of the source of the document or the statements contained therein is not sufficient. See Point I, Government's Reply Memorandum. Some of the facts are actually admitted (¶¶ 95, 96, 97). Any others are reasonably within the knowledge of defendant, if they exist, such that they should have been specifically presented. In fact this cannot be done and defendant has not done so by its denial based on a lack of knowledge.

Paragraphs 100, 101 and 102

See paragraph 99 above.

[103. - no response; deemed admitted]

Paragraphs 104 and 105

Defendant's qualified denials of paragraphs 104 and 195 actually admit the factual essence of these paragraphs.

[106. - no response; deemed admitted]

[107. - no response; deemed admitted]

[108. - no response; deemed admitted]

Paragraph 109

This paragraph merely set forth the number of ballots returned after the Eleven Pledges was mailed, as determined from the dates on the return envelops turned over by the AAA. As indicated in paragraphs 98 and 99 above, the defendant chose not to appear at the deposition of the AAA and a denial based on lack of knowledge does not set forth specific facts sufficient to contradict the facts in this paragraph. Indeed no facts could be presented to refute the facts in this paragraph.

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[110. - no response; deemed admitted]

Paragraph 111

Defendant's qualified denial fails to set forth specific facts contradicting this paragraph which is taken from the Offshore Division By-Laws operative at the time of the 1971 election. The additional statement that a newly adopted amendment changed the weighted voting scheme is irrelevent. See Point IV of the Government's Reply Memorandum.

[112. - no response; deemed admitted]

[113. - no response; deemed admitted]

[114. - no response; deemed admitted]

[115. - no response; deemed admitted]

[116. - no response; deemed admitted]

[117. - no response; deemed admitted]

[118. - no response; deemed admitted]

[119. - no response; deemed admitted]

[120. - no response; deemed admitted]

Paragraph 121

Defendant has previously admitted this paragraph. See Admission #63. In this denial defendant merely refers the Court to its accompanying papers apparently referring to that portion which attempts to justify the late mailing of the election ballots. Defendant's position, however, has no merit as fully discussed in Point V of the Government's Reply Memorandum.

Paragraphs 122 and 123

Defendant fails to set forth specific facts to contradict these paragraphs, merely referring the Court to its accompanying papers. As noted in paragraph 121 above, Point V of the Government's Reply Memorandum dispels defendant's position that election ballots were timely mailed. See also paragraph 26 of the Government's Rule 9(g) Statement which is admitted.

Paragraph 124

Defendant actually admits this paragraph.

[125. - no response; deemed admitted]

[126. - no response; deemed admitted]

[127. - no response; deemed admitted]

[128. - no response; deemed admitted]

Paragraph 129

Defendant's qualified denial actually admits the material facts, namely, that the "Master, Mate and Pilot" August 1971 edition was distributed before the ballots were mailed. Defendant, furthermore, fails to set forth the date on which the subject publication was mailed to the membership, which fact should reasonably be within the knowledge of defendant.

Paragraph 130

Defendant's denial fails to deny the factual essence of Paragraph 130, namely, the Secretary's restatement of part of the opinion in Sheldon v. O'Callaghan, 335 F. Supp. 325 (S.D.N.Y. 1971) (Exhibit CC to the Secretary's Motion).

[131. - no response; deemed admitted]

[132. - no response; deemed admitted]

Paragraphs 133 through 136

Defendant fails to set forth any specific facts contradicting the facts stated, which for the most part are merely recitations of certain provisions of the Offshore Division By-Laws and Local 88 By-Laws. Defendant only attempts here and in its affidavits to "argue" the meaning of those provisions. In Point V(B) of the Government's Reply Memorandum we show that defendant's arguments have no merit and that its failure to comply with these By-Law provisions was another violation of Section 481.

Paragraph 137

By Admission #16 (Exhibit F to the Admissions, p. 34) defendant previously admitted this paragraph and it does not set forth specific facts herein to contradict them. Defendant merely "argues" candidates of Local 88 were entitled to "access" to the membership lists. This is not sufficient, as we show in Point V(B) of the Government's Reply Memorandum, to refute the violation committed by defendant by not providing Local 88 candidates copies of the mailing list, as found by Judge Croake.

Paragraphs 138 and 139

These paragraphs restate portions of Judge Croake's opinion in Sheldon v. O'Callaghan, 335 F. Supp. 325 (S.D.N.Y., 1971). Defendant cannot deny them as such and indeed merely refers the Court to its argument in its accompanying papers.

Paragraph 140

This paragraph restates a portion of Judge Croake's November 4, 1971 order. It cannot be denied as such and indeed defendant merely refers the Court to its argument in its accompanying papers.

Paragraph 141

This paragraph notes defendant moved to reargue Judge Croake's opinion with respect to that portion ordering former Local 88 certified mailing lists be made available. Defendant sets forth no specific facts to contract this paragraph, merely referring the Court to its accompanying argument. While the Government in Point V(B) of its Reply Memorandum amply refutes defendant's argument we also have provided copies of the papers defendant submitted to Judge Croake with respect to its motion to reargue (Appendix, Exhs. D and G).

[142. - no response; deemed admitted]

Paragraph 143

This paragraph notes the ballots returned to the American Bank and Trust by November 15, 1971, the date of Judge Croake's endorsement. Defendants sets forth no specific facts to contradict this paragraph merely claiming the information is unknown to it. That is insufficient to pervent the imposition of summary judgment. It is also noted, however, that defendant actually supplied the identical document from which the number was taken, as noted in paragraph 66 above.

[144. - no response; deemed admitted]

[145. - no response; deemed admitted]

[146. - no response; deemed admitted]

Paragraph 147

See paragraphs 133-137 above.

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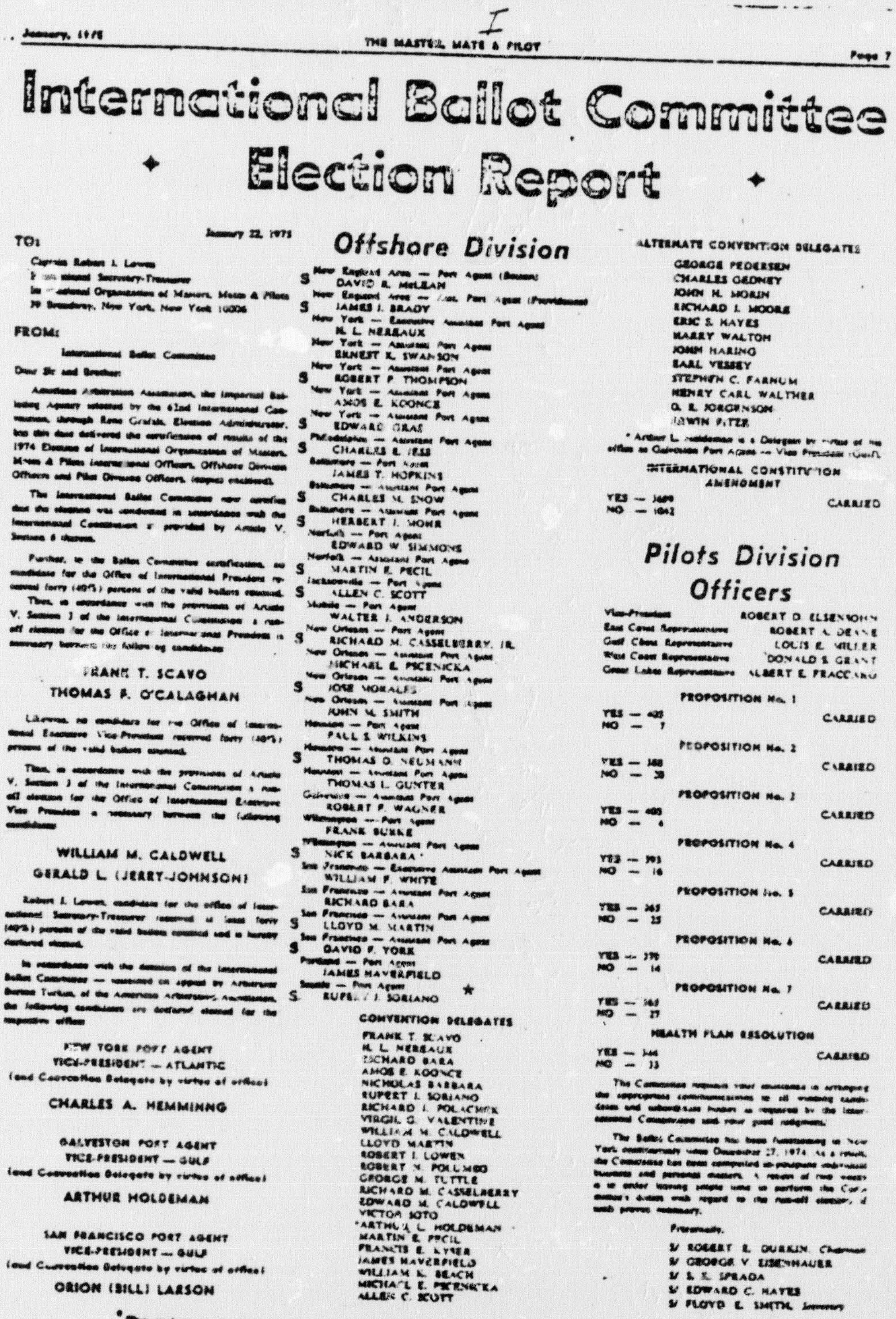

International Ballot Committee Election Report

◆

January 22, 1975

TO:

Captain Robert J. Lowen
International Secretary-Treasurer
International Organization of Masters, Mates & Pilots
39 Broadway, New York, New York 10006

FROM:

International Ballot Committee

Dear Sir and Brother:

American Arbitration Association, the impartial Balloting Agency selected by the 62nd International Convention, through Rene Grafals, Election Administrator, has this date delivered the certification of results of the 1974 Election of International Organization of Masters, Mates & Pilots International Officers, Offshore Division Officers and Pilot Division Officers, (copies enclosed).

The International Ballot Committee now certifies that the election was conducted in accordance with the International Constitution as provided by Article V, Section 6 thereof.

Further, in the Ballot Committee certification, no candidate for the Office of International President received forty (40%) percent of the valid ballots counted.

Thus, in accordance with the provisions of Article V, Section 3 of the International Constitution a run-off election for the Office of International President is necessary between the following candidates:

FRANK T. SCAVO

THOMAS F. O'CALAGHAN

Likewise, no candidate for the Office of International Executive Vice-President received forty (40%) percent of the valid ballots counted.

Thus, in accordance with the provisions of Article V, Section 3 of the International Constitution a run-off election for the Office of International Executive Vice President is necessary between the following candidates:

WILLIAM M. CALDWELL

GERALD L. (JERRY-JOHNSON)

Robert J. Lowen, candidate for the office of International Secretary-Treasurer received at least forty (40%) percent of the valid ballots counted and is hereby declared elected.

In accordance with the decision of the International Ballot Committee — sustained on appeal by Arbitrator Burton Turkus, of the American Arbitration Association, the following candidates are declared elected for the respective offices:

NEW YORK PORT AGENT
VICE-PRESIDENT — ATLANTIC
(and Convention Delegate by virtue of office)

CHARLES A. HEMMINNG

GALVESTON PORT AGENT
VICE-PRESIDENT — GULF
(and Convention Delegate by virtue of office)

ARTHUR HOLDEMAN

SAN FRANCISCO PORT AGENT
VICE-PRESIDENT — GULF
(and Convention Delegate by virtue of office)

S **ORION (BILL) LARSON**

Offshore Division

S New England Area — Port Agent (Boston)
DAVID R. McLEAN
New England Area — Asst. Port Agent (Providence)
S JAMES J. BRADY
New York — Executive Assistant Port Agent
H. L. NERBAUX
New York — Assistant Port Agent
ERNEST K. SWANSON
New York — Assistant Port Agent
S ROBERT P. THOMPSON
New York — Assistant Port Agent
AMOS E. KOONCE
New York — Assistant Port Agent
S EDWARD GRAS
Philadelphia — Assistant Port Agent
S CHARLES E. JESS
Baltimore — Port Agent
JAMES T. HOPKINS
Baltimore — Assistant Port Agent
S CHARLES M. SNOW
Baltimore — Assistant Port Agent
S HERBERT J. MOHR
Norfolk — Port Agent
EDWARD W. SIMMONS
Norfolk — Assistant Port Agent
S MARTIN E. PECIL
Jacksonville — Port Agent
S ALLEN C. SCOTT
Mobile — Port Agent
WALTER J. ANDERSON
New Orleans — Port Agent
S RICHARD M. CASSELBERRY, JR.
New Orleans — Assistant Port Agent
MICHAEL E. PSCENICKA
New Orleans — Assistant Port Agent
S JOSE MORALES
New Orleans — Assistant Port Agent
JOHN M. SMITH
Houston — Port Agent
PAUL S. WILKINS
Houston — Assistant Port Agent
S THOMAS D. NEUMANN
Houston — Assistant Port Agent
THOMAS L. GUNTER
Galveston — Assistant Port Agent
ROBERT F. WAGNER
Wilmington — Port Agent
FRANK BURKE
Wilmington — Assistant Port Agent
S NICK BARBARA
San Francisco — Executive Assistant Port Agent
WILLIAM F. WHITE
San Francisco — Assistant Port Agent
RICHARD BARA
San Francisco — Assistant Port Agent
S LLOYD M. MARTIN
San Francisco — Assistant Port Agent
S DAVID F. YORK
Portland — Port Agent
JAMES HAVERFIELD
Seattle — Port Agent
S RUPERT J. SORIANO ★

CONVENTION DELEGATES

FRANK T. SCAVO
H. L. NERBAUX
RICHARD BARA
AMOS E. KOONCE
NICHOLAS BARBARA
RUPERT J. SORIANO
RICHARD J. POLACHEK
VIRGIL G. VALENTINE
WILLIAM M. CALDWELL
LLOYD MARTIN
ROBERT J. LOWEN
ROBERT N. POLUMBO
GEORGE M. TUTTLE
RICHARD M. CASSELBERRY
EDWARD M. CALDWELL
VICTOR SOTO
*ARTHUR L. HOLDEMAN
MARTIN E. PECIL
FRANCIS E. KYSER
JAMES HAVERFIELD
WILLIAM K. BEACH
MICHAEL E. PSCENICKA
ALLEN C. SCOTT

ALTERNATE CONVENTION DELEGATES

GEORGE PEDERSEN
CHARLES GEDNEY
JOHN H. MORIN
RICHARD J. MOORE
ERIC S. HAYES
HARRY WALTON
JOHN HARING
EARL VESSEY
STEPHEN C. FARNUM
HENRY CARL WALTHER
O. R. JORGENSON
IRWIN PITER

* Arthur L. Holdeman is a Delegate by virtue of his office as Galveston Port Agent — Vice President (Gulf).

INTERNATIONAL CONSTITUTION AMENDMENT

YES — 1609
NO — 1042
CARRIED

Pilots Division Officers

Vice-President	ROBERT D. ELSENSOHN
East Coast Representative	ROBERT A. DEANE
Gulf Coast Representative	LOUIS E. MILLER
West Coast Representative	DONALD S. GRANT
Great Lakes Representative	ALBERT E. FRACCARO

PROPOSITION No. 1

YES — 425
NO — 7
CARRIED

PROPOSITION No. 2

YES — 388
NO — 30
CARRIED

PROPOSITION No. 3

YES — 405
NO — 6
CARRIED

PROPOSITION No. 4

YES — 393
NO — 16
CARRIED

PROPOSITION No. 5

YES — 365
NO — 25
CARRIED

PROPOSITION No. 6

YES — 379
NO — 14
CARRIED

PROPOSITION No. 7

YES — 365
NO — 27
CARRIED

HEALTH PLAN RESOLUTION

YES — 346
NO — 33
CARRIED

The Committee requests your assistance in arranging the appropriate communications to all winning candidates and subordinate bodies as required by the International Constitution and your good judgment.

The Ballot Committee has been functioning in New York continuously since December 27, 1974. As a result, the Committee has been compelled to postpone individual business and personal matters. A recess of two weeks is in order leaving ample time to perform the Committee's duties with regard to the run-off election, if such proves necessary.

Fraternally,

S/ ROBERT E. DURKIN, Chairman
S/ GEORGE V. EISENHAUER
S/ S. E. SPRADA
S/ EDWARD C. HAYES
S/ FLOYD E. SMITH, Secretary

*The union neglected to note the winner for the Port Agent of Port Arthur (Sederland) in this listing. As taken from Page 9 of this same issue of the Master Mate and Pilot, annexed hereto, we note that Ford Cummings won that position. He was not an O'Callaghan slate member.

s - Identifies O'Callaghan Slate Member (as noted from the Election Supplement edition of "Master Mate & Pilot" newspaper wherein said members are identified by the slogan "For Continued MM&P Progress, Prosperity and Strength Vote For The O'Callaghan Team" - Exh. J to the Appendix)

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ELECTION REPORT

2063a

(Continued from Page 8)

OFFSHORE DIVISION

NEW YORK PORT AGENT

Vice-President—Atlantic

CHARLES N. HENNING	595
JOSEPH B. GAIER	1,659
CHARLES A. HEMMING	1,750
Blank	210
Void	2

GALVESTON PORT AGENT

Vice-President—Gulf

LEONARD L. GAUSE	1,177
ROBERT L. JONES	1,388
ARTHUR HOLDEMAN	1,394
Blank	253
Void	4

SAN FRANCISCO PORT AGENT

Vice-President—Pacific

JACK OFLET, JR.	906
VIRGIL G. VALENTINE	1,514
ORION (BILL) LARSON	1,571
Blank	225
Void	0

NEW ENGLAND AREA PORT AGENT (BOSTON)

VINCENT M. FREDERICO	155
FREDERICK S. LAIRD	260
FRANK C. FLAHERTY	483
JOHN ROSAND	835
DAVID A. McLEAN	1,275
CHARLES J. LANDRY	451
ANTHONY J. BELMONTE	185
ANDREW G. OUGHELTREE	167
Blank	401
Void	4

NEW ENGLAND AREA

Assistant Port Agent (Providence)

WILLIAM J. McLAUGHLIN	231
GEORGE F. LANDRIGAN	152
WILLIAM F. O'BRIEN	407
LEO SKEVNICK	767
VINCENT J. YAKAVONIS	565
MALCOLM A. MacDONALD	196
MILTON A. ANDREWS	141
JOHN P. HEMMALIN	159
JAMES J. BRADY	1,112
JOSEPH DeVICO	114
Blank	364
Void	8

NEW YORK

Executive Assistant Port Agent

RICHARD J. POLACHEK	1,532
G. N. HALEBLIAN	887
H. L. NEREAUX	1,588
Blank	207
Void	2

NEW YORK

Assistant Port Agent

LAWRENCE A. BURLINGAME	1,328
EDWARD GRAS	1,514
ROBERT A. LIDDY	980
FRANK RANDOMSKI	1,238
JOSEPH A. STANELY	1,413
VICTOR SOTO	1,195
FRANCO MORALES	819
WILLIAM R. SORRENTINO	881
ERNEST K. SWANSON	1,824
AMOS E. KOONCE	1,521
ROBERT P. THOMPSON	1,693
Blank	218
Void	5

PHILADELPHIA

Assistant Port Agent

CYRIL J. ELIAS	1,160
CHARLES SUNDERLAND	548
PHILIP VECCHIONE	884
CHARLES E. JESS	1,329
Blank	289
Void	6

BALTIMORE PORT AGENT

JAMES H. HOPKINS	2,837
MORRIS WEINSTEIN	1,203
Blank	174
Void	2

BALTIMORE

Assistant Port Agent

HERBERT J. MOHR	1,662
JOHN Q. CONRAD	1,215
MARTIN L. SCHULTZ	1,328
CHARLES M. SNOW	1,692
WILLIE R. RAY	1,187
Blank	254
Void	5

NORFOLK PORT AGENT

WILLIAM K. BEACH	1,509
JACOB SPIEGEL	193
EDWARD W. SIMMONS	2,244
Blank	268
Void	2

NORFOLK

Assistant Port Agent

MARTIN E. PECIL	3,125
Blank	1,084
Void	7

JACKSONVILLE PORT AGENT

MARION C. N. WELLS	699
JULIAN C. ALLEN	336
ALLEN C. SCOTT	1,331
OWEN R. LEWIS	199
E. C. BAKER	309
CHARLES O. NORSTRAND	1,041
Blank	286
Void	15

MOBILE PORT AGENT

FRANCIS E. KYSER	1,450
WALTER J. ANDERSON	2,336
Blank	420
Void	10

NEW ORLEANS PORT AGENT

N. L. LaROCCA	708
CORNELIUS F. COYLE	1,467
RICHARD M. CASSELBERRY, JR.	1,686
Blank	353
Void	2

NEW ORLEANS

Assistant Port Agent

CLAUDE PARHAM	1,464
MICHAEL E. PSCENICKA	1,783
A. REID, JR.	1,484
MANFRED OSBORN	432
NORMAN H. FISCHER	809
LEON J. MAAS, JR.	579
HERMAN DEAN HILLMAN	804
JOHN M. SMITH	1,498
JOSE MORALES	1,591
MILTON H. GONZALES	396
Blank	305
Void	8

PORT ARTHUR (Nederland) PORT AGENT

FORD CUMMINGS	1,552
JAMES R. GIPLIN	1,477
CHARLES P. GAINES	732
Blank	449
Void	6

HOUSTON PORT AGENT

ROBERTO N. POLUMBO	[illegible]
PAUL S. WILKINS	2,[illegible]
Blank	260
Void	1

HOUSTON

Assistant Port Agent

DAVID HAA	1,132
THOMAS D. NEUMANN	1,7[illegible]
CLYDE J. SMITH	1,1[illegible]
RAYMOND E. MASSEY	503
JACK W. RAIMOND	321
THOMAS L. GUNTER	1,551
SAMUEL P. KNOX	429
DONALD J. SCHNEIDER	181
THOMAS L. SCHNEIDER	125
Blank	291
Void	24

GALVESTON

Assistant Port Agent

ROBERT F. WAGNER	1,657
PAUL D. HERMANN, JR.	1,457
NEROD F. HALL	687
Blank	411
Void	4

WILMINGTON PORT AGENT

GEORGE VALENTINE	781
HENRY C. WALTHER	1,534
FRANK BURKE	1,603
Blank	297
Void	0

WILMINGTON

Assistant Port Agent

NICK BARBARA	3,298
Blank	916
Void	2

(Continued on Page 22)

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2064a

AMERICAN ARBITRATION ASSOCIATION, ADMINISTRATOR

ELECTION DEPARTMENT

In The Matter Of The Election

INTERNATIONAL ORGANIZATION OF THE MASTERS, MATES AND PILOTS

13 50 0039 74

CERTIFICATION OF RESULTS

Pursuant to a letter-agreement signed September 19, 1974 by Captain Robert J. Lowen, International Secretary-Treasurer of the International Organization of Masters, Mates and Pilots, hereinafter referred to as the Union, the American Arbitration Association, hereinafter referred to as the Administrator, agreed to conduct the Union's 1974 Officers' Election. This election was conducted in conformity with the Constitution and By-Laws of the Union pursuant to the Administrator's Election Rules.

The ballots were prepared under the supervision of the Administrator and the direction of the International Ballot Committee.

Eligibility to vote was determined from lists provided for that purpose to the Administrator by the Union.

To be valid, envelopes had to be either postmarked by midnight, December 24, 1974 or receive a ruling to be counted by the International Ballot Committee and/or the undersigned.

The Administrator, in accordance with its election rules, designated the undersigned to supervise and preside over the Election and to issue a certification of the results.

The counting of the ballots took place from January 8 through January 10, 1975 at the Victorian Ballroom of the Abbey-Victoria Hotel, located at 151 West 51 Street, New York, New York 10019.

A recount of the Offshore Division was conducted on January 18, 1975 at the offices of the Administrator, located at 140 West 51 Street, New York, New York 10020.

Both counts were administered under the supervision of the International Ballot Committee and the undersigned in the presence of candidates, attorneys and observers. Five Thousand Five Hundred (5,500) envelopes were received by the administrator.

11	Local 27 - Inland Division
108	Local 30 - Inland Division
277	Inland Division - West Coast & Pacific Region
389	Inland Division - Atlantic & Gulf Inland Region
434	Pilots Division
4281	Offshore Division

Ninety-six (96) were neither opened nor counted for the following reasons:

Local 27 - Inland Division

0	Invalid ballots

Local 30 - Inland Division

2	Withdrawn from Union

Inland Division - West Coast and Pacific Region

1	Duplicate ballot
2	Name not on list

Inland Division - Atlantic and Gulf Inland Region

1	Duplicate ballot
5	Name not on list
1	No identification on envelope
6	Issued to one - returned by different voter
11	Suspended from Union
1	No address on envelope
2	Ballots sent to Florida P.O. Box
1	Ballot sent to towing company

Pilots Division

1	Duplicate ballot
1	Resigned from Union
4	No identification on envelope

Offshore Division

4	Duplicate ballots
3	Name not on list
5	No identification on envelope
10	Issued to one - returned by different voter
1	Suspended from Union
7	No signature
4	Ballots sent to Union office
23	Late post-mark

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Secrecy of the ballot was maintained at all times.

Results are certified to be as follows:

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	Local 27 Inland	Local 30 Inland	Inland West Coast	Inland East Coast	Pilots Div.	Offshore Div.	Total
Ballots Counted	11	106	274	361	428	4224*	5404
INTERNATIONAL PRESIDENT							
Patrick J. King	1	13	7	14	16	257	308
Frank T. Scavo	4	73	138	22	78	1797	2112
Phillip N. Schmidt	1	1	37	1	5	152	197
Harry Friedman	1	3	22	18	16	577	637
Thomas O'Callaghan	4	15	62	302	300	1241	1924
Everett F. Hall	0	1	1	1	3	126	132
Blank	0	0	1	1	6	45	53
Void	0	0	6	2	4	21	33
INTERNATIONAL EXECUTIVE VICE PRESIDENT							
George Vance	2	4	37	11	18	619	691
William M. Caldwell	4	17	67	307	289	1366	2050
Gerald L. Johnson	5	78	137	26	92	1696	2034
Robert B. Wright	0	7	30	10	17	434	498
Blank	0	0	1	5	11	87	104
Void	0	0	2	2	1	14	19
INTERNATIONAL SECRETARY-TREASURER							
John R. Seybert	2	3	32	19	24	771	851
Robert J. Lowen	5	24	77	305	302	1578	2291
Timothy A. Brown	4	79	151	30	89	1765	2118
Blank	0	0	13	7	13	100	133
Void	0	0	1	0	0	2	3
INTERNATIONAL CONSTITUTION AMENDMENT							
Yes	9	81	217	310	356	2726	3699
No	1	12	33	8	29	959	1042
Blank	1	13	24	43	43	529	653
Void	0	0	0	0	0	2	2

*Eight (8) ballots were signed by the voter therefore declared invalid.

D

Pilots Division

Vice President

Robert D. Elsensohn	308
Blank	120
Void	0

East Coast Representative

Robert A. Deane	332
Blank	96
Void	0

Gulf Coast Representative

Louis E. Miller	300
Blank	128
Void	0

West Coast Representative

Donald S. Grant	293
Blank	134
Void	1

Great Lakes Representative

Albert E. Fraccaro	259
Blank	169
Void	0

Proposition No. 1

Yes	405
No	7
Blank	16
Void	0

Proposition No. 2

Yes	388
No	20
Blank	20
Void	0

Proposition No. 3

Yes	408
No	4
Blank	16
Void	0

Proposition No. 4

Yes	393
No	16
Blank	19
Void	0

Proposition No. 5

Yes	365
No	25
Blank	37
Void	1

Proposition No. 6

Yes	379
No	14
Blank	35
Void	0

Proposition No. 7

Yes	365
No	27
Blank	36
Void	0

Health Plan Resolution

Approved	344
Not Approved	33
Blank	51
Void	0

Offshore Division

New York Port Agent Vice President - Atlantic

Charles N. Henning	595
Joseph B. Gaier	1659
Charles A. Hemming	1750
Blank	210
Void	2

Galveston Port Agent Vice President - Gulf

Leonard L. Gause	1177
Robert L. Jones	1388
Arthur Holdeman	1394
Blank	253
Void	4

San Francisco Port Agent Vice President - Pacific

Jack Oflet, Jr.	906
Virgil G. Valentine	1514
Orion (Bill) Larson	1571
Blank	225
Void	0

New England Area - Port Agent (Boston)

Vincent M. Frederico	155
Frederick S. Laird	260
Frank C. Flaherty	483
John Rosand	835
David A. McLean	1275
Charles J. Landry	451
Anthony J. Belmonte	185
Andrew G. Ougheltree	167
Blank	401
Void	4

New England Area - Assistant Port Agent (Providence)

William [illegible]. McLaughlin	231
George E. Landrigan	152
William F. O'Brien	407
Leo Skevnick	767
Vincent J. Yakavonis	565
Malcolm A. MacDonald	196
Milton A. Andrews	141
John P. Hemmalin	159
James J. Brady	1112
Joseph DeVico	114
Blank	504
Void	8

New York - Executive Assistant Port Agent

Richard J. Polachek	1532
G. N. Haleblian	887
H. L. Nereaux	1588
Blank	207
Void	2

New York - Assistant Port Agent

Lawrence A. Burlingame	1328
Edward Gras	1514
Robert A. Liddy	980
Frank Randomski	1238
Joseph A. Stanely	1413
Victor Soto	1195
Franco Morales	819
William R. Sorrentino	881
Ernest K. Swanson	1824
Amos E. Koonce	1521
Robert P. Thompson	1693
Blank	218
Void	5

Philadelphia - Assistant Port Agent

Cyril J. Elias	1160
Charles Sunderland	548
Philip Vecchione	884
Charles E. Jess	1329
Blank	289
Void	6

Baltimore - Port Agent

James T. Hopkins	2837
Morris Weinstein	1203
Blank	174
Void	2

Baltimore - Assistant Port Agent

Herbert J. Mohr	1662
John Q. Conrad	1215
Martin L. Schultz	1328
Charles M. Snow	1692
Willie R. Ray	1187
Blank	254
Void	5

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Norfolk - Port Agent

William K. Beach	1509
Jacob Spiegel	193
Edward W. Simmons	2244
Blank	268
Void	2

Norfolk - Assistant Port Agent

Martin E. Pecil	3125
Blank	1084
Void	7

Jacksonville - Port Agent

Marion C. N. Wells	699
Julian C. Allen	336
Allen C. Scott	1331
Owen R. Lewis	199
E. C. Baker	309
Charles O. Norstrand	1041
Blank	286
Void	15

Mobile - Port Agent

Francis E. Kyser	1450
Walter J. Anderson	2336
Blank	420
Void	10

New Orleans - Port Agent

N. L. LaRocca	708
Cornelius F. Coyle	1467
Richard M. Casselberry, Jr.	1686
Blank	353
Void	2

New Orleans - Assistant Port Agent

Claude Parham	1464
Michael E. Pscenicka	1783
A. Reid, Jr.	1484
Manfred Osborn	432
Norman H. Fischer	809
Leon J. Maas, Sr.	579
Herman Dean Hillman	804
John M. Smith	1498
Jose Morales	1591
Milton H. Gonzales	395
Blank	305
Void	8

Port Arthur (Nederland)

Ford. Cummings	1552
James R. Giblin	1477
Charles P. Gaines	732
Blank	449
Void	6

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Houston Port Agent

Robert N. Polumbo	1492
Paul S. Wilkins	2463
Blank	260
Void	1

Houston - Assistant Port Agent

David Haa	1132
Thomas D. Neumann	1770
Clyde J. Smith	1435
Raymond E. Massey	503
Jack W. Raimond	321
Thomas L. Gunter	1551
Samuel P. Knox	429
Donald J. Schneider	181
Thomas L. Schneider	125
Blank	291
Void	24

Galveston - Assistant Port Agent

Robert F. Wagner	1657
Paul D. Hermahn, Jr.	1457
Nerod F. Hall	687
Blank	411
Void	4

Wilmington - Port Agent

George Valentine	781
Henry C. Walther	1534
Frank Burke	1603
Blank	298
Void	0

Wilmington - Assistant Port Agent

Nick Barbara	3298
Blank	916
Void	2

San Francisco - Executive Assistant Port Agent

George M. Tuttle	1725
William F. White	2190
Blank	301
Void	0

San Francisco - Assistant Port Agent

Michael Kay	1515
John B. Admire	1177
Edward M. Caldwell	1809
David F. York	2076
Lloyd Martin	2192
Richard Bara	2210
Blank	240
Void	3

Portland - Port Agent

James Haverfield	2033
Charles W. Wallace	1899
Blank	271
Void	13

Seattle - Port Agent

Frank Cain	634
Florin Dente	1037
Rupert J. Soriano	1021
Ray Steward Armitstead	666
Blank	250
Void	8

Convention Delegates

Norman H. Fischer	506
David A. McLean	1092
Thomas K. Earle	206
Amos E. Koonce	1572
George E. Landrigan	244
Orion A. Larson	1038
Jose Morales	873
Joseph Wesley	242
John Q. Conrad	554
Philip Vecchione	643
Vincent J. Yakavonis	606
Julian C. Allen	398
N. L. LaRocca	648
Joseph A. Stanley	686
William M. Caldwell	1387
John Haring	217
William K. Beach	1224
Francis E. Kyser	1243
James Joseph Brady	891
Victor Soto	1274
Florin Dente	1066
Andrew G. Ougheltree	279
Marion C. N. Wells	538
William R. Sorrentino	880
Cornelius F. Coyle	929
Edward M. Caldwell	1285
Edward W. Simmons	1032
George Vance	986
Leon J. Maas, Sr.	505
Rupert J. Soriano	1511
Arthur L. Holdeman	1262
Robert N. Polumbo	1335
Martin F. Pecil	1258
Charles H. Jess	1011
Frank C. Flaherty	479
Paul D. Hermann	442
Henry C. Walther	1128
Claude Parham	547
Milton H. Gonzales	358
Ernest K. Swanson	1045
Robert A. Liddy	761
Virgil G. Valentine	1411

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James R. Giblin	1062
Daniel F. Kennedy	286
Julian Platon, Jr.	206
Frederick S. Laird	262
Tom Gunter	978
Michael E. Pscenicka	1213
John M. Smith	755
Lloyd Martin	1365
Richard A. Cahill	785
George M. Tuttle	1331
Charles Henning	783
Bernard O'Hagan	398
Allen C. Scott	1163
Richard G. Connelly	777
David F. York	774
Jacob Spiegel	185
Jack W. Raimond	222
James Haverfield	1235
Manfred Osborn	249
Frank T. Scavo	2083
Ford Cummings	628
James T. Russel	143
Frank Burke	1093
Owen R. Lewis	152
Morris Weinstein	1081
A. Reid, Jr.	516
H. L. Nereaux	1694
Charles Wallace	1085
Clyde J. Smith	441
Frank R. Cain	457
Nickolas Barbara	1537
Walter J. Anderson	1130
Robert J. Lowen	1362
Thomas D. Neumann	928
Richard J. Polachek	1427
Paul Wilkins	747
Richard Bara	1603
J. R. Silver	759
Charles M. Snow	1015
Richard M. Casselberry	1304
Leo Skevnick	654
Lawrence A. Burlingame	1076
Cecil G. Austin	150
Neil H. Lambert	666
John Rosand	572
Frederick Jacobsen	634
Herman Dean Hillman	635
Blank	314
Void	105

Alternate Convention Delegates

Stephen C. Farnum	618
Erwin Fitze	206
Charles Gedney	717
John Haring	644
Eric S. Hayes	682
O. R. Jorgenson	377
Richard J. Moore	703
John H. Morin	706

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George Pedersen	727
Earle Vessey	641
Henry Carl Walther	385
Harry Walton	675
Blank	2572
Void	0

Burton B. Turkus
BURTON B. TURKUS, ARBITRATOR

DATED: JANUARY 22, 1975
STATE OF NEW YORK) ss.:
COUNTY OF NEW YORK)

On this 22nd day of January, 1975, before me personally came and appeared Burton B. Turkus, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Claire Hellerstein

CLAIRE HELLERSTEIN
Notary Public, State of New York
No. 24-1749060
Qualified in Kings County
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- x

JAMES D. HODGSON, Secretary of Labor,
United States Department of Labor,

Plaintiff,

-against-

INTERNATIONAL ORGANIZATION OF MASTERS,
MATES AND PILOTS, INTERNATIONAL
MARITIME DIVISION, ILA, AFL-CIO,

Defendant.

- x

72 Civ. 5031 (CBM)

AFFIDAVIT ON BEHALF
OF DEFENDANT UNION

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

MARVIN SCHWARTZ, being duly sworn, deposes and says:

I am counsel for the defendant (hereinafter sometimes called the "Union" or "MM&P") in the within matter, and I have been International Counsel for the Union since 1956. I am familiar with all of the affairs and activities of the defendant.

OUTLINE OF AFFIDAVIT

This affidavit is submitted for several purposes. For ease of understanding, these purposes are as follows:

1. Plaintiff's Motion for Summary Judgment

Plaintiff seeks Summary Judgment declaring the 1971 Election of Officers conducted by the defendant void and ordering a new election under the supervision of the Secretary of Labor. Plaintiff has alleged in its complaint a number of violations committed by the Union during the course of its 1971 election of officers. In this motion, however, plaintiff has selected only five and bases its application for Summary Judgment on these five alone, which are as follows:

(a) The 60th Convention Newsletter constituted campaign literature.

(b) The "Eleven Pledges" newsletter, constituted campaign literature.

(c) Two elected Port Agents were wrongfully given the additional positions of Vice President, Atlantic and Vice President, Gulf.

(d) A delay in sending out the ballots may have affected the election

(e) Candidates for office in the Port of New York were denied their right to a membership list.

This affidavit is submitted in opposition to these five allegations.

2. Cross-Motion on Alleged Violation Relating to Vice Presidents

The alleged violation described in paragraph (c) above relating to the Vice Presidents was in no respect wrongful or illegal, but at any rate, the matter complained of cannot occur again. This affidavit is submitted in support of the Union's cross-motion for summary judgment dismissing this allegation from plaintiff's complaint.

3. Defendant Union's Motion for Summary Judgment

This affidavit is further submitted in support of the Union's independent motion for summary judgment dismissing the complaint on the ground that it is moot, in view of the intervening election conducted by the defendant and the facts and circumstances surrounding such intervening election.

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4. Defendant Union's Motion, in the alternative for Partial Summary Judgment

Alternatively to the Union's independent motion for summary judgment dismissing the entire complaint on the basis of mootness, the Union moves for partial summary judgment dismissing certain alleged violations described in the plaintiff's complaint, but not urged on the instant motion of the plaintiff. These alleged violations, for which the Union seeks partial summary judgment of dismissal, involve the following matters:

(a) That the three International officers, by reason of such positions, also became the Executive Officers of the Union's Offshore Division.

(b) No ballots were sent to members of former Inland Local 47.

(c) That non-postmarked ballots were not counted.

(d) The membership lists were maintained for inspection and were available to candidates at the AAA's offices in New York, rather than in each of the ports.

(e) That the distribution of campaign literature was made through the AAA office in New York, rather than in each of the ports.

PRELIMINARY STATEMENT

It is important to note at the outset that this lawsuit does not involve any claim by the Secretary of Labor that the election was tainted with any element of violence, threats or intimidation. As can be seen from the complaint and the papers served by the Secretary of Labor on this motion, the issues in this case solely involve provisions of the Union's Constitution and By-Laws and factual issues relating to whether or not certain documents distributed by the Union constituted campaign literature. No claim is made that there were any irregularities or fraud involved in the balloting procedures or related matters.

BACKGROUND MATERIAL

In order to be able to understand many of the issues involved in plaintiff's motion and defendants' motion and cross-motion it is appropriate to set forth some of the background of the defendant labor organization and the circumstances that led up to its 1971 election.

The election which took place in 1971 was the first to be held under the newly structured organization which came into being in October 1970 as a result of a membership referendum that adopted a new International Constitution which radically altered the internal structure of the Union.

Recognizing that this first election would be unusual, it was designated specifically in the new International Constitution to be the "transitional" election, and the period of occupancy of office was to be known as the "transitional term of office". Similar recognition of the unique nature of this first "transitional" election was set forth in the by-laws of the Offshore Division of the Union, which were drafted after the proposed new Constitution received Convention approval, and which came into being also by membership referendum on October 1, 1970.

To appropriately focus on the case at bar, it is in order to set forth some background narrative on the structure of the defendant union prior to its reorganization, and also some background material with respect to certain other contemporaneous events in which the Union was involved which the Secretary has brought into the picture forming part of his allegations of wrongdoing in the lawsuit.

THE STRUCTURE OF THE UNION PRIOR TO OCTOBER 1, 1970

The International Organization of Masters, Mates and Pilots is a union composed primarily of licensed deck officers serving aboard American Flag oceangoing passenger, cargo and tanker vessels; ship's officers serving on tugboats and other inland craft on the rivers, bays and sounds of the United States; and pilots who navigate American and Foreign Flag vessels in and out of the various ports of the United States. The Union also has certain members who are employed by the United States Military Sealift Command and other governmental bodies, and also some unlicensed marine personnel.

Prior to 1970, the Union was composed of a number of semi-autonomous Offshore, Inland and Pilot Locals. The great majority of these were the Offshore locals, whose principal offices were in the major ports on the Atlantic, Gulf and Pacific Coasts. One of the Inland Locals, Local 47, had its principal office in Cleveland, Ohio, Local 47's membership consisted mainly of masters and licensed deck officers who sailed aboard vessels in the Great Lakes.

The rights, duties and privileges of the members were governed by an International Constitution, as well as by By-Laws of each man's individual local. There were three International officers, a President, Vice President and Secretary-Treasurer who were elected by all the members of the Union, and Local officials who were elected by the membership of each particular local. The salaries of the local officials were determined by each local. The annual dues of a member was determined by his own Local's By-Laws, subject only to a minimum amount set forth in the International Constitution.

The International Organization of Masters, Mates and Pilots was the last of the maritime unions to maintain this semi-autonomous local structure. For many years, changes in the International structure had been the subject of a membership discussion. In March of 1968, a Constitutional advisory committee met for the purpose of recommending a new Constitution which would provide for consolidation of the existing locals along "division" lines. The recommendation of the Constitutional advisory group was printed in the March 1968 issue of the International newspaper, The Master, Mate and Pilot, and subsequently was placed before the International Convention which met in May of 1968. The broad outlines of the recommendation were sent out to the organization membership for an advisory vote. It was placed on the 1968 International election ballot in the form of a "Proposition A", and read as follows:

> "PROPOSITION A
>
> Consolidation of the Locals
>
> Are you in favor, in principle, of a consolidation of the Locals of the International Organization of Masters, Mates and Pilots along the following lines:
>
> 1. Offshore Division - All Offshore Locals
> 2. Inland Division - All Inland Locals
> 3. Pilot Division - All Pilot Locals
> 4. Government Employees' Division
>
> If the answer to the above is "Yes", a Constitutional Convention shall be called in accordance with the provisions of the International Constitution to implement the will of the membership.
>
> YES NO
>
> ____ ____
>
> ____ ____"

The proposition received an affirmative 5 to 2 vote of the Organization's membership.

Continued efforts along the road to consolidation resulted in the drafting of a new International Constitution, and thereafter, a completely new set of By-Laws for the proposed Offshore Division, which was hoped to be the first fully structured Division under the new Constitution.

A referendum of the entire membership approved the new Constitution, and a referendum of members of former Offshore Division Locals approved the creation of the Offshore Division and adoption of its By-Laws. Both the new International Constitution and the Offshore Division By-Laws became effective October 1, 1970.

LOCAL 47's WITHDRAWAL FROM THE ORGANIZATION

The proposed restructuring of the Organization was not a universally popular move. In particular, it was strenuously opposed by the leadership and membership of Local 47, the Inland Local headquartered in Cleveland, Ohio. Prior to the International referendum on the new Constitution, the membership of Local 47, by its own separate membership referendum voted to disaffiliate from the International Union in the event the International membership at large voted to approve the new Constitution and its restructuring of the Union.

The operative part of the disaffiliation resolution approved by the Local 47 membership referendum was as follows:

> Now, Therefore, be it and it is hereby resolved, that in the event the requisite majority of the International membership vote to approve the new Constitution (1) Local 47, Great Lakes and Rivers District, of the International Organization of Masters, Mates and Pilots, shall

thereby be deemed immediately to have terminated the relationship between Local 47 and the International and Local 47 shall no longer be affiliated with the said International Organization of Masters, Mates and Pilots; (2) that from that moment forth, reference to the International will be stricken from Local 47's books and records and the Local shall be known as Local 47, Great Lakes and Rivers District; (3) Local 47 shall take any and all action necessary and appropriate to protect and defend the institutional rights and interests of its membership.

It is further resolved, that the Constitution and By-Laws Committee of Local 47 shall prepare and submit to the membership for ratification revisions of the Constitution and By-Laws of Local 47 to effectuate this resolution.

Adopted by unanimous affirmative vote of the membership of Local 47, Great Lakes and Rivers District, International Organization of Masters, Mates and Pilots, in Convention assembled, March 6, 1970.

As stated previously, the new Constitution was approved by a majority of the Union membership, and came into effect October 1, 1970, thus bringing about the condition under which Local 47's disaffiliation became effective.

At no time has the membership of Local 47 voted to re-affiliate.*

MM&P AFFILIATION WITH THE ILA

The International Organization of Masters, Mates and Pilots held its 60th Convention during the period July 26 to 28, 1971, in Galveston, Texas. Many things were on the agenda for that Convention, among which was a proposed affiliation of the

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* The question of Local 47's status as a constituent body of the International Organization has been the subject of a lawsuit that previously was pending in this Court, bearing the title VINCENT LARCOMBE, and all others similarly situated v. INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, INTERNATIONAL MARINE DIVISION OF THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, Civil No. 73 Civ. 1789 MEF. That suit, claiming that the membership of Local 47 were members in good standing of the International Organization at the time of the 1971 elections, has been discontinued with prejudice.

International Organization of Masters, Mates and Pilots with the International Longshoremen's Association.

Teddy Gleason, President of the ILA, made a speech to the delegates at the Convention. A resolution calling for the affiliation of the MM&P with the ILA, in the form of a proposed amendment to the MM&P's International Constitution, was passed by the delegates to the Convention by a vote of 33 for and 1 against.

In the eyes of the overwhelming majority of the delegates, affiliation with the International Longshoremen's Association was of vital necessity for the continued survival of the MM&P.

The maritime industry, for many years has been racked with serious inter-union rivalries. The Marine Engineers Beneficial Association, the counterpart union to the MM&P representing licensed engineers aboard oceangoing American Flag vessels, has campaigned long and hard to destroy the age-old tradition of the primacy of the captain aboard the vessels, and substitute in his place, the Chief Engineer. In addition, the MEBA wages a continuous assault on the collective bargaining agreements of the International Organization of Masters, Mates and Pilots. They have gone so far in this direction as to charter their own union subdivision, the Associated Maritime Officers of District 2, MEBA, a subsidiary that allows into its ranks licensed deck officers as well as licensed engineers. This Association now competes for licensed deck officer jobs aboard oceangoing vessels by way of offering a variety of concessions to vessel owners.

Embarking on its newly structured organization the leadership of the MM&P, as reflected in the 23 to 1 vote, felt most strongly that the strength that ILA affiliation would give to the MM&P was of vital importance for the survival and continued growth of the MM&P*.

At the Convention, along with the passage of the resolution calling for a submission of the affiliation question to membership referendum, a ballot committee to conduct the referendum was elected by acclamation of the Convention delegates. The American Arbitration Association was designated to be the impartial balloting agency to conduct the amendment referendum.

The importance and urgency of the affiliation question was underscored at the Convention. By August 20, 1971, less than a month after the close of the Convention, the ballots on the affiliation referendum, totalling 10,107, were mailed by the AAA to the members for vote.

Attendant upon the submission of the ballots to the membership, a newsletter, entitled "60th Convention Newsletter on the Resolution of Affiliation of the IOMM&P with the ILA" was sent to all the Union membership. This newsletter reported on the resolution adopted at the 60th Convention, presented excerpts from statements made at the Convention by Teddy Gleason, and otherwise gave background material with respect to steps leading to the affilation resolution and the importance of such affiliation. The newsletter was mailed to the Union membership on August 19, 1971, the day before the affiliation ballots went out.

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* The affiliation of the MM&P with ILA was bitterly opposed by the Marine Engineers Beneficial Association and its ally, the Seafarer's International Union of North America. They protested such prospective affiliation to President George Meany of the AFL-CIO, but President Meany refused to take any steps to prevent the affiliation, and, moreover, gave approval to the prospective affiliation.

Although the affiliation with the ILA was overwhelmingly supported by the delegates to the 60th Convention, it was far from an overwhelmingly popular issue with the membership. Certain outdated prejudices against the longshoremen as a result of long-past racketeering in that union, and certain prejudices with regard to the ethnic makeup of longshore membership, made the outcome of the referendum vote highly uncertain. Those who were outspoken proponents of the affiliation were subject to considerable abuse and vilification by much of the membership. But at any rate, the sense of the Convention delegates as to the urgency and importance of the affiliation was such that, irrespective of the outcome to them personally, a strong newsletter urging the affiliation, was deemed to be a must for the continued survival of the International.

The count of the balloting, which was on a 90-day mail referendum, took place on November 23, 1971. The Affiliation Amendment passed by a vote of 2,595 to 2,296.

POINT I. THE 60th CONVENTION NEWSLETTER

Defendants deny that this Newsletter constituted campaign literature on behalf of any candidate in the 1971 MM&P election. Defendant's argument that the decision of Judge Croake is not determinative of this issue is set forth separately in the accompanying affidavit of Burton M. Epstein, Esq., and will not be repeated here.

The document itself, as previously stated, was sent out in tandem with the vital ballot on affiliation of the MM&P with the ILA. It is customary for the defendant union and labor unions in general, as will be testified to at the trial of this matter, to submit to the membership whether in the form of a Newsletter or otherwise, reports on the activities of the Union, and specifically, reports and recommendations by the Union's governing body--here the Convention delegates--with respect to matters of importance to the Union.

The ILA affiliation was a matter of critical importance, and it was absolutely proper and within the scope of the Union to send out the Convention Newsletter reporting on the activities of the Convention and urging membership ratification of the merger ballot.

The affidavit of Thomas W. Gleason, President of the ILA which accompanies this Affidavit, also clearly sets forth the circumstances which gave rise to his comments at the MM&P Convention..

The timing of the affiliation referendum, the mailing out of the Newsletter, and the election balloting is important to stress. The Newsletter was sent on August 19, 1971, and the ballot on the ILA affiliation was sent out the very next day. More than a month elapsed before the balloting for the election commenced--those ballots were mailed on September 21, 1971.

In this connection, we are treated to a "damned if you do and damned if you don't" argument by the Secretary of Labor.

He first alleges that the Newsletter, despite its mailing the day before the affiliation ballot, was actually campaign literature in connection with the Union election whose balloting did not start until a month later. At the same time, as will be discussed later, the Secretary raises a further objection to the election, saying that the Union committed a violation by sending out the election ballot as late as September 21, 1971, and that the ballots should have been sent out by August 27, 1971. There is no doubt that if in fact such a timetable had been followed, the Secretary of Labor would now be jumping up and down claiming that the sending of the ballots on August 27, 1971, so soon after the mailing of the Convention Newsletter of August 19, 1971, clearly showed that the Newsletter was really campaign literature.

Damned if you do and damned if you don't.*

Suffice it to say, that what the Secretary of Labor is urging is that the customary and regular business of the union--even on most critical issues--must be brought to a standstill, and, in fact, emasculated, when an election is nearby. This is farcical. A union's affairs are not and cannot be run this way, and testimony will be offered to show this. The affiliation issue was of monumental importance to the Union, and in view of the overwhelming mandate for affiliation that came from the 33 to 1 vote of the Convention delegates, it would have been a betrayal of the rights and interests of the Union members for the affiliation ballot to have gone out unaccompanied by a strong Newsletter recommending an affirmative vote on the affiliation.

Lloyd Sheldon may have complaints about the contents of the 60th Convention Newsletter since he, in fact, was the one delegate at the Convention who voted against the affiliation resolution. It swipes at those forces who were against affiliation, but remains focused on the affiliation issue. Any complaint by the dissenter Sheldon against the Newsletter frankly favoring affiliation cannot be elevated to or transformed into a valid complaint that it represents campaign literature in an upcoming election.

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* In fact, there was no "delay" for nefarious reasons as alleged by the Secretary of Labor. This point will be discussed later in this affidavit and is also the subject of the accompaning affidavit of Kenneth Camisa, the former Director of Research for the defendant.

Hostility Toward Affiliation

The venomous anti-affiliation literature, appealing to the basest racial prejudices, was appalling. It was in fact a mark of courage for those who supported the affiliation to speak out on its behalf. The advocates of affiliation were subjected to the most vilifying and outrageous personal abuse.

In the South, the racist opponents to affiliation distributed in volume to the MM&P membership a clipping from an April 1971 ILA publication showing Captain O'Callaghan shaking hands with black officials of the ILA, and also showing Joseph Gaier, an O'Callaghan slate candidate for Port Agent, Port of New York, also in company with black ILA officials. This pandering to racism permeated the vicious campaign conducted by the anti-affiliation forces. Attached to this Affidavit as Exhibit A, is a copy of such clipping.

The Secretary of Labor alleges that not only was the Convention Newsletter campaign literature, but it was campaign literature for O'Callaghan and for all those candidates who were on the O'Callaghan slate or were incumbents.

If the Secretary's latter theory is correct, then we should expect to see some parallel in the voting for all of the elective positions. That is, if the pro-affiliation literature was for all of the incumbents, it should have resulted in some similarity in results in all of the cases; if O'Callaghan won by 40% then Lowen should have won by 40%, Caldwell by 40%, Joe Gaier, the New York Port Agent, by 40%, and so on down the line.

The evidence in the case shows absolutely that no such correlation in voting even faintly resembling this occurred. The AAA certification of results, Exhibit M. to the Secretary's 9(g) statement, reveals, as a sample, the following;

NAME	POSITION	APPROXIMATE PERCENTAGE OF VOTES
Thomas F. O'Callaghan	International President	44%
William F. Caldwell	International Executive Vice President	48%
Robert J. Lowen	International Secretary-Treasurer	49.6%
James R. Silver	Assistant Port Agent, Baltimore	63%
Howard H. Williams	Field Representative, Savannah	75%
Patrick J. King	Port Agent, Boston	61%
Robert Jones	Port Agent, Galveston	58%
Robert N. Palumbo	Port Agent, Houston	68%
Joseph B. Gaier	Port Agent, New York	50.4%

The complete and utter lack of uniform results rebuts both theories of the Secretary--that the Convention Newsletter was campaign literature on behalf of not only O'Callaghan but all of his slate and the incumbents, and also the Secretary's theory that such Newsletter may have affected the outcome of the election.*

To sum up: From all of the foregoing and the accompanying papers in opposition, the Newsletter was not campaign literature; it was not campaign literature on behalf of O'Callaghan and all of his slate and the incumbents; the Newsletter did not affect the outcome of the election.

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* The International officers needed a 40% plurality to win; all other positions above required a simple plurality. It is an interesting sidelight to note that Captain O'Callaghan who was most prominent in advocating the ILA merger got the lowest percentage of votes in the above sample.

POINT II. UNION NOTICE - ALL CONSTITUTIONAL AMENDMENTS AND RESOLUTIONS OF THE 60th CONVENTION RATIFIED.

The Secretary contends that the document sent to the membership entitled "All Convention Amendments and Resolutions of the 60th Convention ratified - Affiliation of IOMM&P as the International Marine Division of the ILA (AFL-CIO) Affirmed" constituted campaign literature.*

The defendant denies that this document constituted campaign literature. It was as stated above with respect to the Convention Newsletter an ordinary union document sent in the union's regular course of business, reporting to the membership on the result of the significant ballot on the affiliation with the ILA. It followed the completion of the balloting, and properly notified the electorate of the outcome.

From the argument of the Secretary with respect to this document, it is once again apparent that what the Secretary envisions as being the only acceptable Union operation during an election time is a laboratory condition wherein the Union ceases doing all business in any other avenue.

It is apparent from the Secretary's memorandum, that the language of this document has no bearing on the issue. Commencing with the 60th Convention Newsletter, the Secretary permanently links anything pro-affiliation with O'Callghan and his slate and the incumbents. Consequently, even a single one-line statement advising the membership that the affiliation referendum passed, would be enough to be categorized as campaign literature on behalf of O'Callaghan, et al.

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* The Secretary prefers to call this the "Eleven Pledges" document. So be it.

Such a contention by the Secretary, we submit, falls by its own weight. This "poisoned fruit" doctrine, stemming from the Secretary's link between the vote on the affiliation and the vote on the election is wrong to start with, and cannot be applied to this "Eleven Pledges" notice.

The same arguments which we discussed above reciting the substantial unpopularity of the affiliation issue, and the disparity in the percentage of election returns among the O'Callaghan slate, despite his allegation that the affiliation issue and the Newsletter applied to all slate members are similarly applicable to this document. So, too, is the conclusion above that the document did not affect the outcome of the election.

Again, evidence will be submitted at trial to show that documents of this kind sent to members are routine and completely within the normal operations of the MM&P and of other lab[illegible]ions as well.

To sum up this Point: The "Eleven Pledges" document was not campaign literature; it was not campaign literature on behalf of O'Callaghan and all of his slate and the incumbents; the "Eleven Pledges" document did not affect the outcome of the election.

POINT III. OFFSHORE DIVISION VICE-PRESIDENTS (ATLANTIC AND GULF)

The Secretary surrounds this simple issue with flamboyant language seeming to infer that certain significant bodies of the membership were denied participation in the selection of the two Vice Presidents.

In actuality, what occurred here, was that for this one transitional election, the persons who were respectively elected to be the Port Agents for the Ports of New York and Galveston would automatically, solely for this transitional period, be the Vice-Presidents for the Atlantic Region and the Gulf Region.

The Union, as heretofore stated, specifically cross-moves with respect to this allegation, requesting that it be stricken from the plaintiff's complaint. As will be described below, it is moot for a number of reasons, and no relief can now be granted with respect to this allegation.

Pursuant to the Offshore Division's By-Laws, the 1971 election was the transitional election. For that one election only, the individual who was elected from and by the membership of the New York Port would be the Vice-President (Atlantic) and the individual elected from and by the membership of Local 20 (Galveston-Houston area), would automatically be the Vice-President (Gulf).

The Offshore Division By-Laws further provided that in the next election any member of the entire Offshore Division, irrespective of his "home port", would be eligible to be a candidate for any Offshore Division office, and, correspondingly, all Offshore members would vote for all Offshore Division positions. Thus, the passage of time has rendered this charge moot, since the election which was conducted in 1974 was under these new rules.

The second aspect of mootness came about in January, 1974, when, by referendum vote, the Offshore Division membership amended the Offshore Division By-Laws to eliminate the separate positions of Offshore Division Vice-Presidents.

The amendment voted affirmatively by the Offshore Division membership read as follows:

"AMEND BY-LAWS IN ORDER TO FURTHER
REDUCE EXPENSES

This Article was discussed for several hours and it was the unanimous opinion of all of the members of the Offshore Division Executive Council that the following amendments to the Offshore Division By-Laws are essential to prevent a further worsening of the financial condition of the Offshore Division and the Organization. For example, as the By-Laws now read, it can and has been argued that there must be three additional officials elected as Vice-Presidents. Further, as the By-Laws now read, the Offshore Division can find itself in the position of having to elect Field Representatives for ports already closed.

* * * * *

The Offshore Division By-Laws shall be amended wherever and in such respects as are necessary, to provide the following:

1. The three elected Vice Presidents shall not be in addition to the elected Port Agents.

2. The Vice President (Atlantic) shall be the Port Agent of the Port of New York; the Vice President (Pacific) shall be the Port Agent of the Port of San Francisco; the Vice President (Gulf) shall be the Port Agent of the Port of Galveston.

3. As economic necessity or as service to the membership may require, the Offshore Division Executive Council shall by the majority vote, have the authority to close, reclassify or merge ports, and to designate all Field Representatives."

The implementing change made in the Offshore Division By-Laws was as follows:

"Article III, Section 1(a) is amended by adding the following paragraph:

'The candidate elected as Port Agent, New York, shall, by reason of such election, also be and hold the position of Vice-President (Atlantic); the candidate elected as Port Agent, San Francisco, shall, by reason of such election, also be and hold the position of Vice-President (Pacific); the candidate elected as Port Agent, Galveston, shall, by reason of such election, also be and hold the position of Vice-President (Gulf).'"

As stated above, the 1974 Elections were conducted in accordance with the new provisions, and were division-wide in eligibility and vote. Consequently, there is no relief that can be given with respect to this charge.

Although it is unnecessary to make further comment on this charge in support of the cross-motion for dismissal, a few observations are appropriate.

First, one argument the Secretary may raise against mootness--although not applicable here where the separate position is no longer in existence--is that the individual who came to office by reason of an impropriety should not be able to use such position to gain advantage in a succeeding election, and, therefore, the mere occurrence of an intervening, unsupervised election, is insufficient to render the complaint moot.

Such theoretical reason for denying mootness is not present in the instant case. There is no complaint made about any impropriety (other than the other general claims of impropriety in the Secretary's suit to which we are elsewhere responding) specifically related to the positions of New York Port Agent and Galveston Port Agent. That is, Joseph Gaier was elected to the position of Port Agent, New York and Robert Jones was elected to the position of Port Agent, Galveston. Any advantage which they may have obtained by reason of an incumbency, was not obtained by reason of holding the challenged position of Vice-President, but had been obtained by reason of holding the unassailed position of Port Agent. Therefore, no added "advantage" was gained by reason of this dual office.

Moreover, the By-Law provision relating to the transitional election was sound in concept and non-violative of law.

The membership of the Port of New York (former Local 88) was the largest of all of the Atlantic Ports. Similarly, the membership of the Port of Galveston was the largest of all of the Gulf Ports. It was logical, therefore, for the agents who would be elected by the membership of the largest respective ports to be also given the second title.

In addition, when the By-Laws were drafted and the interim measures placed into effect, there was some uncertainty as to the necessity of having separately elected officials for Offshore Division Vice-Presidencies. Whether such separate positions might prove redundant, could be better determined after the experience of the transition period was gained. As noted above, it was determined that there was no need for these additional elected positions, and the amendment to the Offshore Division By-Laws, eliminating these separate provisions, was placed into effect.

Further, the Secretary's argument is basically fallacious. It is predicated on the theory that a member is being deprived of the right to vote for someone who would be *his* officer--the "disenfranchisement" argument. The realities of the activities of the Port Agent during and under the transitional period and, indeed, during and under the Union structure prior to 1970, contained the same theoretical elements of disenfranchisement, but were never complained about, and, indeed, were not unlawful.

That is to say the following: In the transitional election, as well as under the prior semi-autonomous local structure, the membership of the Local in each port voted for their local officers. The President of Offshore Local 88 was voted for only by Local 88 members, and so on down the line.

The membership of these Offshore Division Locals consisted of licensed deck officers sailing on oceangoing vessels. These members come from all of the different ports. Thus, for example, a vessel could have on it a captain who was a member of Local 88, a chief mate who was a member of Local 14, a second mate who was a member of Local 90, one third mate who was a member of Local 24 and one third mate who was amember of Local 15.

This ship might complete its voyage in the Port of New York, the "jurisdiction"of Local 88. The second mate, a member of Local 90, might, at the payoff, have a claim for overtime that was disputed and not paid by the company. The local 90 member would turn to an official of Local 88, for whom he had not voted, to present his grievance to the company, and to represent his claim. This was, and still is, a constant event, simply by reason of the nature of the maritime industry. Thus, you always had officials, for whom a member did not vote, representing them and acting on their behalf.

Similarly, under the semi-autonomous system which existed for many years, the locally elected officials comprised the Union's International Executive Committee, casting weighted votes in that chief governing body, whose ultimate decision was to control the affairs of the entire Union and its members. Thus, the President of Local 88, with a larger membership, through his greater weighted vote in the International Executive Committee, would exercise more control over the affairs of a member of Local 15 than would the President of Local 15 himself.

This type of structure is typical of many unions, and no case that we are aware of has ever declared such a setup to constitute "disenfranchisement" of the right vote for one's union official.

Finally, as is discussed later and in greater length, the anti-O'Callaghan slate candidates for these two offices have defeated the incumbent O'Callaghan slate candidates in the 1974 election; Charles A. Hemming has beaten Joseph B. Gaier in New York, and Arthur Holdeman has beaten Robert L. Jones in Galveston. Therefore, on all counts this issue is moot.

We have, perhaps, in this lengthy discussion, indulged ourselves in using a cannon to kill a fly. But to sum up: On the mootness point, (a) by reason of the disappearance of the separate positions of Vice-President; (b) the election procedures in the post-transitional terms which have been followed in the current election wherein all Offshore Division members were eligible to be candidates for and vote for all Offshore Division officers; (c) the unquestioned propriety of the 1971 vote for the Port Agent of New York and Post Agent of Galveston positions, *per se*, and (d) the defeat of the O'Callaghan slate for these positions in the 1974 election, plaintiff's motion predicated on this allegation, should be denied, and the Union's cross-motion for partial summary judgment dismissing this allegation from the Secretary's complaint should be granted.

POINT IV. BALLOTS NOT MAILED WITHIN THIRTY DAYS AFTER THE CLOSE OF THE NOMINATING PERIOD.

In this issue, also, the Secretary of Labor, without a shred of evidence relating to the time problems and physical difficulties relating to the mailing out of the ballots, engages in the wildest speculation and comes up with a conclusion that the mailing of the ballots was purposefully delayed for some nefarious reason. This is all absolutely hogwash.

The accompanying affidavit of Kenneth Camisa, who, at the time of the election, was the Research Director of the defendant Union, sets forth clearly the problems that surrounded the preparation and mailing of the ballots for the unique 1971 transitional election. I will repeat here only the highlights of that affidavit.

The new Constitution of the International, which became effective in October, 1970, was, necessarily, the first document to be drafted providing for the massive restructuring of the Union. As can be seen from that Constitution, the provision for the mailing out of the ballots (Article V, Section 8(d)) not later than the thirtieth* day following the close of the nominating period, related solely to ballots for only three officers--the International President, the International Executive Vice-President and the International Secretary-Treasurer. See Article V, Section 5, of the International Constitution.

Subsequent to the drafting of the International Constitution, the Offshore Division By-Laws were drafted. These By-Laws provided, in Article V, that the election for the Offshore Division officers was to be conducted along with the election for the International Officers, and to be supervised by the same International Ballot Committee which was elected in accordance with the International Constitution, and similarly that the Offshore Division election was to be conducted by the same impartial balloting agency, the American Arbitration Association, selected by the Convention subject to the same rules and conditions as outlined in the International Constitution for International elections, except as specifically provided for in the Offshore Division By-Laws.

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* It should also be noted that pursuant to Article V, Section 5, any candidates who are nominated have 10 days after the close of the nominating period in which to advise the International Secretary-Treasurer in writing, that they will accept the nomination. Within that same 10-day period of time, any accepting nominee has an opportunity to submit a statement, not to exceed 200 words, which was to appear at the ballot. Therefore, in effect the Constitution, if read this way, seems only to provide 20 days for the preparation of a ballot for three positions. Alternatively, it can be read to provide that the 30-day period starts after the 10 days in which the candidate has to accept his nomination which would be the true close of the nominating period.

Therefore, the 1971 election to be supervised and conducted by the International Ballot Committee and the AAA, was to be an election not merely for three officers, but, rather, for every Offshore Division office, and every Pilot as well*. This meant an election of fifty officers plus an election for Convention delegates from each of the ports. All told, there were in excess of 175 candidates for all of these offices that were to be voted for in the 1971 Election.

For the Offshore Division alone, it was necessary, therefore, to prepare nine separate ballots. In addition, there had to be prepared a separate ballot for the Inland Division members and a separate ballot for the Pilots Division.

In the preparation of each of these separate ballots, the problems as to the order in which the names would appear, so as not to favor any candidate, had to be decided upon by the ballot committee. In addition, challenges that had been made to the ballot committee had to be gone over. Further, rulings had to be made by them on the different jobs that were to be filled in each port.

In view of all of the work that was required, it is indeed remarkable that the ballots were mailed out as quickly as they were on November 21, 1971. The Secretary claims the ballot should have been mailed no later than August 27, 1971, thirty days after the end of the nominating period. If we add the 10 days afforded to each candidate for the right to send in his statement, we come very close in any event to a 30-day period, and under any fair reading of the Constitution and the intent behind it in light of the surrounding circumstances, well within the spirit and reasonable mailing requirement which the Constitution sets forth.

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* The Pilot Division was fully formed by the time of the 1971 elections, and they, too, held their individual elections along with the International and the Offshore Division.

Additionally, as was mentioned in the affidavit of Mr. Camisa, the AAA was conducting the near-concurrent referendum on the affiliation with the ILA. Those ballots went out August 20, 1971. The AAA, being the independent body selected to conduct both ballots, had indicated to the International Ballot Committee its reluctance about sending out the two ballots too close together, since they were concerned that it might be confusing to the membership who might inadvertently return the ballots in the wrong envelopes which could have resulted in the voiding of their votes in both elections. The AAA, in view of this, was completely in accord with the time schedule that eventually resulted and at no time urged that the election ballots be sent out any earlier than they were. Evidence in support of this will be adduced at the trial of the action.

The alleged skullduggery which the Secretary ruminates on in his Memorandum is just not the case. Exhibits D1 through D9 and F1 and F2 to the Secretary's 9(g) statement, show the eleven separate ballots that had to be prepared, and the number of candidates who were running for office.

The Secretary's argument that the delay "allowed" the MM&P's magazine the "Master, Mate and Pilot" to come out, is again a part of the Secretary's misconceived "laboratory condition" theory of Union activities. That magazine is Exhibit GG to plaintiff's 9(g) statement. The contention that it was campaign literature did not impress Judge Croake. It is a fair descriptive report on the activities of the Union, and absolutely not campaign literature, and did not affect the outcome of the election. The Secretary's comments about its emphasis on the affiliation issue have been gone into above, and, as demonstrated there were of no affect on the outcome of the elections.

We respectfully refer the Court to the additional points describing what transpired during the period of time when the ballots were being prepared and prior to the mailing which are set forth in Mr. Camisa's affidavit.

The Secretary's motion with respect to this allegation is completely without merit and cannot be the base for the granting of summary judgment.

POINT V. THE LOCAL 88 MEMBERSHIP LIST

The argument relating to Judge Croake's decision on this issue is set forth in the accompanying affidavit of Burton M. Epstein, and will not be repeated here. It is enough to say that as was the case with the 60th Convention Newsletter, no evidentiary hearing was held by Judge Croake on the membership list issue, and, moreover, such membership list issue was not even before Judge Croake in any of the affidavits or demand for relief submitted to him on the preliminary injunction issue.

Of significant importance, however, is the fact that even Judge Croake did not find any violation as the Secretary seems to be complaining of.

In this regard, we are treated to a quintessential example of semantic legerdemain when we look at the Secretary's memorandum with regard to this issue. At page 30 he speaks about the plaintiff's seeking to "disgorge" a certified mailing list. At page 33 he speaks about requiring "the production" of the Local 88 mailing list. At page 92 he speaks about a refusal "to provide" a Local 88 mailing list. At page 95 he speaks about candidates "in possession" of the copy of the mailing list.

The simple fact of the matter is that Judge Croake did not issue an order stating that the Local 88 candidates were entitled to physical possession of a mailing list. This is set forth in his endorsed order attached as Exhibit II to the Rule 9(g) statement of the Secretary. This order came about after a motion had been made by the Union for reargument on this point, wherein Judge Croake stated in part as follows:

> "Defendant now seeks, in its moving papers, relief from a remedy which was not granted. The Court has not been requested in the Complaint nor has it ever ordered that plaintiff obtain 'physical possession' of mailing lists.
>
> "This new issue is not properly presented in this motion for reargument."

We are left then with the only real question on this issue: whether the Local 88 mailing list was "available" to candidates, and this has nowhere been denied. The list always was available to candidates at the office of the American Arbitration Association in New York, where Local 88 has its headquarters.

And it is such availability, and not the right to physically obtain a copy of the mailing list, which was all that a candidate for office in Local 88 was entitled to under the Local 88 By-Laws.

At the trial of this action evidence will be introduced to show that in 1967, the same provision was found in the Local 88 By-Laws with respect to membership lists as is set forth in the Local 88 By-Laws attached as Exhibit HH to the Secretary's 9(g) statement. It will be further shown at trial that during the 1967 Local 88 election of officers, Israel Ben Scheiber, an arbitrator for the American Arbitration Association, under whose auspices the Local 88 election was conducted, determined, on the same question of the right of a candidate to physical possession of the membership list, that the Local 88 By-Laws did not require the physical delivery of a membership list to a candidate for Local office. It will be also shown that a subsequent Local 88 election was held in 1969, in which the 1967 ruling of Arbitrator Scheiber that a candidate for office was not entitled to physical possession of a copy of the list, was followed and abided by,* and that the appropriate Local 88 governing body interpreted and found the provisions of their By-Laws not to entitle a candidate to physical possession of a membership list.

From the foregoing, it is urged that the Secretary's motion with respect to this allegation relating to the Local 88 membership list is without substance, and cannot be the basis for the granting of summary judgment.

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* There is no statutory requirement that entitles a candidate to physical possession of a membership list.

CONCLUDING REMARKS ON PLAINTIFF'S MOTION

As shown from the foregoing, the allegations set forth by the Secretary in support of his motion for summary judgment are all without merit, and consequently, his motion should be denied.

Moreover, the Union has raised an affirmative defense to this action which remains in issue, and, consequently, on this ground alone, the motion should be denied.

The complaint to the Secretary of Labor on behalf of the several complainants, according to the Secretary, was filed with him on March 29, 1973. Among such complainants was one Jack Ofelt.

The final intra-union remedy available to the complainants was an appeal to the Union's General Executive Board, as admitted by the Secretary. The General Executive Board entertained the appeals of the complainant's on January 25 and 26, 1971. The complainants knew that the General Executive Board was meeting on January 25 and 26 to take up the appeals and Mr. Ofelt was invited to attend, but he declined to do so. The Board denied the appeals on January 26, 1972.

The statute (29USC §482) requires that a complaint be filed with the Department of Labor within one calendar month after the exhaustion of intra-union remedies. The complainants should have filed their complaint with the Secretary no later than February 26, 1972. Consequently, complainants have not complied with the statutory requirement.

The Secretary does not allege that the complainants did not know of such denial at the time it was made on January 26, 1972. At best he alleges that no written notice of the denial of the appeals was given to the complainants until Burton Hall received the letter from Captain Lowen on March 2, 1972 (See Plaintiff's Memorandum p. 101). With this issue and defendant's affirmative defense still remaining factually in dispute, plaintiff's motion for summary judgment cannot be granted.

From all of the foregoing, therefore, Plaintiff's Motion for Summary Judgment should be denied.

UNION'S INDEPENDENT MOTION FOR SUMMARY JUDGMENT

The defendant Union moves independently for summary judgment dismissing the complaint of the Secretary of Labor on the ground of mootness, inasmuch as the Union has conducted an untainted, intervening election in accordance with its Constitution and By-Laws, and that under the circumstances and within the discretion of this Court, no useful purpose would be served by ordering a further election under the supervision of the Secretary of Labor. Moreover, a supervised election described to be mandated in order to vindicate "the interests protected by Section 401" is in fact, unnecessary and redundant in view of the outcome of and facts surrounding the intervening election.

The election which is under attack by the Secretary of Labor in this lawsuit is the one that took place in 1971. Pursuant to the Union's Constitution and its several Divisional By-Laws, it has conducted its next regular election during the period October through December, 1974. The election procedures which were followed in the 1974 election were in complete conformity with the International's Constitution and its various Divisional By-Laws, and once again were conducted by the American Arbitration Association.

Complete procedural safeguards have been maintained. All challenges that have been presented by any of the candidates in the 1974 election have been heard and ruled upon by the International Ballot Committee, none of whom were candidates in the election. In addition, further appeals from the rulings of the International Ballot Committee were made to Burton Turkus, the Arbitrator who was appointed under the election rules of the American Arbitration Association to hear and determine any challenges to balloting procedures made by any of the candidates in the election.

The scope of such appeals which have been heard and ruled upon by Mr. Turkus have been wide, concerning alleged invalid ballots, void ballots, eligibility requirements, etc. Absolutely no question of fraud in any of the balloting procedures has been raised.

For instance, a challenge was raised with respect to certain ballots sent to members belonging to one of the Inland Regions having been addressed to them in care of the company for which they worked. Mr. Turkus issued a ruling validating such ballots, which resulted in those members not being disenfranchised from their right to vote. This ruling has not been further challenged by any of the candidates.

We are, naturally, aware of the Glass Bottle Blowers Association case cited by the Secretary in his memorandum. However, in view of the circumstances surrounding this intervening election, and the results, the policy reasons for conducting a supervised election as described in that case are not applicable.

The results of the intervening non-supervised election clearly demonstrate that the evil sought to be remedied by the Secretary's supervised election, i.e., to dispel any unfair advantage obtained by the incumbents from the election under attack in the Secretary's lawsuit, does not exist in this case.

The results of this intervening election, which were obtained during the recount of all of the Offshore Division votes held on January 18, 1975, show that the large majority of the O'Callaghan slate have lost the election, and that Captain O'Callaghan, himself, running for re-election, has barely succeeded in getting enough votes to be in a run-off for the Presidential office. His chief opponent, Frank Scavo, received slightly less than 40% of the votes, with Captain O'Callaghan behind him with about 36% of the votes. Pursuant to the

International Constitution, it is necessary that candidates for the International offices receive 40% of the vote, in order to be elected. In the race for President, Captain O'Callaghan was opposed by five other persons, but he will now be in a run-off only with the front-runner, Frank Scavo.

In addition, Captain William Caldwell, the incumbent Vice-President, running for reelection on the O'Callaghan slate for Vice-President, is also involved in a run-off. Only Captain Lowen, the third of the incumbents, gathered the necessary 40% to be reelected.

In addition, the following O'Callaghan slate candidates have lost their bids for reelection in the interving election:

New York Port Agent - Vice-President (Atlantic)

Joseph B. Gaier, the incumbent on the O'Callaghan slate lost to Charles A. Hemming, one of the complainants to the Secretary of Labor in the 1971 election.

Galveston Port Agent - Vice-President (Gulf)

Robert L. Jones, the incumbent on the O'Callaghan slate lost to Arthur Holdeman.

New York - Executive Assistant Port Agent

Richard J. Polachek, an incumbent in a different office and on the O'Callaghan slate, lost to Henry L. Nereaux, one of the complainants in the 1971 election.

Baltimore - Port Agent

Morris Weinstein, the incumbent on the O'Callaghan slate lost to James P. Hopkins.

Norfolk - Port Agent

William K. Beach, the incumbent on the O'Callaghan slate lost to Edward W. Simmons.

Mobile - Port Agent

Francis E. Kyser, the incumbent on the O'Callaghan slate, lost to Walter J. Anderson.

Assistant Port Agent - Port Arthur, Texas

James R. Giblin , the incumbent on the O'Callaghan slate, lost to Ford Cummings.

Houston Port Agent

Robert N. Palumbo, the incumbent on the O'Callaghan slate, lost to Paul S. Wilkins.

Wilmington, California Port Agent

Henry C. Walther, the incumbent on the O'Callaghan slate, lost to Frank Burke.

San Francisco - Executive Assistant Port Agent

George M. Tuttle, the incumbent on the O'Callaghan slate, lost to William F. White.

Portland Port Agent

Charles W. Wallace, the incumbent on the O'Callaghan slate, lost to James Haberfield.

In addition to such broad sweep loss by incumbents running for re-election, Patrick J. King, who was elected Port Agent, Port of Boston, on the O'Callaghan slate in 1971, did not run for re-election for that position, and consequently is out of office. John Beirne, who was elected Port Agent for the Port of Providence on the O'Callaghan slate in 1971, has retired and did not run for re-election. Henry J. Stegall, who was elected Port Agent, Port of New Orleans, in the 1971 election on the O'Callaghan slate, has retired and did not run for re-election. John Handley, who was elected Port Agent, Port of Philadelphia, on the O'Callaghan slate, has retired and did not run for re-election.

Significantly, the foregoing results show that with respect to the two Vice-Presidencies, Atlantic and Gulf, of the Offshore Division, which are under specific attack by the Secretary, the incumbent O'Callaghan slate candidates were both defeated. Charles Hemming, who could fairly be classified as one of the major complainants to the Secretary of Labor about the 1971 election, has, in this intervening election, now been elected as the Port Agent for New York and Vice-President, Atlantic.

Arthur L. Holdeman, another anti-O'Callaghan candidate, is now the Offshore Division Vice-President, Gulf. He and Hemming are now both on the International's General Executive Board.

Henry Nereaux, who might also be fairly described as another major complainant in the 1971 election, has been elected to office for the second highest New York position, that of the Executive Assistant Port Agent, defeating the O'Callaghan slate candidate, Richard J. Polachek.

And most significantly, Lloyd Sheldon, who was perhaps the third major complainant in the 1971 election and who opposed O'Callaghan for the Presidency in the 1971 election, had previously retired and was not a candidate in the intervening 1974 election. Therefore, the political rivalry between O'Callaghan and Sheldon and the whole issue over the alleged anti-Sheldon campaign literature had come to an end long before the 1974 election, and therefore no longer remains in the picture as something which the Secretary needs to correct or be concerned with.

And, of course, a new election ordered by this Court could cause a compounded mischievous result. The O'Callaghan slate candidates who have lost in the intervening election could have a chance to run again and possibly this time be the victors. The defeated anti-slate candidates could then argue that the Secretary's election was itself a tainted election, since it might have implied to the membership that there was something wrong about the 1974 intervening election in which the anti-slate candidates had been elected, and it was for that purpose that the Secretary granted the right to conduct his own new election. The medicine of the Secretary's election could prove more harmful than the alleged sickness which it might seek to remedy.

Further, to attempt to rerun the 1971 election under the then-existing conditions and provisions of the Constitution and By-Laws would be an impossibility. To wind back the clock and try, at this time, to figure out what the membership of any particular local is, would be a futile endeavor. Moreover, none of the anti-O'Callaghan slate wishes to return to the Local setup for elections, which would be the case if the 1971 election were to be rerun under the provisions of the Offshore Division By-Laws then governing.

Other procedural infirmities which the Secretary of Labor objected to in the transitional election, were not present in this intervening election. The "disenfranchisement" problem complained about with respect to the Offshore Division Vice-Presidencies has disappeared. As stated previously, all Offshore Division members were eligible to be candidates for all Offshore Division offices, and, correspondingly, all Offshore Division members voted in all Offshore Division races. Moreover, the O'Callaghan slate candidates have lost the two Vice-Presidencies in question.

A second issue raised in the transitional election also vanished in this intervening election. Under the new Constitution and Offshore Division By-Laws, no one was permitted to obtain physically a copy of any membership list, and no one has made a challenge claiming such entitlement.

The other argument in the last election that the balloting did not take place within 30 days after the close of nominations, is not a problem in the intervening election, and no candidate has alleged any such violation.

The other issues raised in the Secretary's complaint, such as the failure to count non-postmarked ballots and the failure to send ballots to former Local 47 members--all of which will be discussed later dealing with our alternative motion for a partial summary judgment for dismissal--did not arise during the intervening election.

One final word on mootness and the facts and circumstances of the intervening election. The taint of unfair advantage clearly was not present in the intervening election, as shown by the results set forth above. The only result that would come from a new election under the supervision of the Secretary would be a drain on the Union's treasury. The costs incurred thus far in conducting the 1974 intervening election are well in excess of $45,000. (My best estimate is that the ultimate cost will be close to $90,000.) To require another election, designed to theoretically cure a defect which in fact does not exist, would ill serve the interests of the members of the Union and the Union's treasury. It is clearly within the law and the sound discretion of the Court not to order a new election under the supervision of the Secretary of Labor.

The scrupulous work and effort already done by the Union in conducting the intervening election, as well as the additional work and preparation for the upcoming run-off of the top positions, would all come to naught if a new election were now to be ordered. Such a procedure would be basically injurious and unfair to the membership of the Union.

From all of the foregoing, therefore, it is respectfully urged that the plaintiff's complaint be dismissed.

UNION'S MOTION IN THE ALTERNATIVE FOR PARTIAL SUMMARY JUDGMENT

On the grounds urged above, the Union has independently moved for summary judgment dismissing the entire complaint of the Secretary of Labor. Alternatively to such motion, the Union moves for summary judgment dismissing certain allegations of wrongdoing set forth in the complaint, which were not urged upon the Secretary's motion for summary judgment.

POINT I. THE THREE INTERNATIONAL OFFICERS BY REASON OF SUCH POSITIONS, ALSO BECAME THE EXECUTIVE OFFICERS OF THE UNION'S OFFSHORE DIVISION

The International Constitution, ratified by the membership of the entire union, states that the three International officers shall, by dint of such position, also be the executive officers of all fully formed Divisions. The Union's Offshore Division is one such fully formed Division.

By raising a complaint about this provision of the Constitution, the Secretary of Labor, is in effect, condemning every Union which aspires to be or is national in scope. Such a proposition is unheard of and there is no case on record which supports this broadside attack on the internal workings and structure of a Union.

The vast majority of unions within the labor movement, contain some sort of pyramid structure. That is, they start at a "Local" level, wherein, pursuant to the LMRDA, the members of a local vote directly for their "local" officers. Thereafter, going up the structure, there are myriad ways in which the officials on the intermediate levels or top levels, of the parent organization are selected. This may be by delegate vote, or by direct vote of an expanded electorate.

In all such cases, this higher echelon of union officials always maintains and exercises control and direction in varying degrees over the membership of the subordinate bodies. Yet, under such a structure, no single subordinate body by and of itself can determine who it is that will be in the second or higher echelon of leadership. These upper-level leaders are selected from a broader base electorate than any one single local.

Never has such a pyramid setup been condemned by any Court, nor does the law (enacted when such pyramid structures of union organization were well known) compel or even hint that such a pyramid structure is illegal.

Under the Secretary's theory, only those union officials who are popularly elected by the smallest units of members can have any say in the affairs of such small local membership. This would cause a complete fragmentation of the union movement, and would wind back the clock to the 19th Century when the union movement was in its embryonic stages.

Moreover, it would fly in the face of other legislation which clearly contemplates this pyramid type arrangement, such as the provisions of 29 U.S.C. Section 461, et. seq., governing trusteeships. There, parent organizations are clearly recognized to have power over their subordinate organizations and to participate in the activities of such subordinate organizations.

In the case of the Masters, Mates and Pilots, democratic voting procedures are in fact followed which are in excess of those required by Federal legislation. That is, not only are the divisional officers elected popularly, but the

International officers themselves are also voted for by membership ballot rather than by delegate election, as would be authorized under 29 U.S.C. Section 481 (a).

Aside from the basic incorrectness of the Secretary's position, the actual structure and makeup of the governing body of the Offshore Division further shows the Secretary's complaint to be without merit.

The governing body of the Offshore Division is its Offshore Division Executive Council, which is composed of the three International officers, along with 14 elected port agents from the various ports comprising the Offshore Division. Decisions of the Offshore Division Executive Council are made by majority vote. Each member has one vote.

It is this Offshore Division Executive Council which as described in its By-Laws, controls the activities of the Division and its membership. Article IX, Section 2(b), states

> "Section 2(b). The Offshore Division Executive Council shall have the authority to consider and act on any and all matters affecting the Offshore Division."

All decisions and activities which are vital to the Offshore Division are directly made either through this entire Offshore Division Council, or by some other broad-based body composed solely of Offshore Division members or representatives as described in the Division's By-Laws.

It is this Council which designates the union trustees to the jointly administered pension welfare and vacation plans, and it is similarly this Offshore Division Council which has the authority to close ports.

As another example, Article X, Section 2, describes the makeup of the negotiating committee which deals with the lifeblood of the Union-the contracts under which the members work. Such Negotiating Committee consists of 26 persons, with the three International officers constituting a very small percentage of the whole. This committee acts by majority vote, and it is this committee alone which has the authority to call a strike against an employer or employers, and it is similarly by majority vote of this committee that a proposed contract can be presented to the membership for referendum ballot.

In further support of this allegation of wrongfulness, the Secretary has referred to Article VII Section 1 of the Constitution which provided that votes on the Union's General Executive Board were based on the average membership of the subordinate body that a Board member represented and that the three International officers on the General Executive Board, authorized to cast one-half of the votes of the Offshore Division, would thereby gain an inordinately powerful role on the General Executive Board. The Offshore Division represents about 67 % of the entire membership.

Moreover, as executive officers of the other fully formed divisions, they might also have had additional voting strength from those other Divisions. Thus, the International Officers under the provisions cited by the Secretary could conceivably have had over 50% of the vote on the General Executive Board.

Assuming, arguendo, some substance to the Secretary's contention at the time it was made, this charge is no longer in the picture. The membership of the Union has amended Article VII, Section 1 of the Constitution to provide that each member of the General Executive Board shall cast only one vote, irrespective of the number of members in the subordinate body he represents.* As currently constituted, therefore, the Union's General Executive Board now consists of the following:

International President
International Executive Vice President
International Secretary-Treasurer
Offshore Division Vice President - Atlantic
Offshore Vice President - Gulf
Offshore Vice President - Pacific
Pilots Vice President
Executive Officer-Inland-Atlantic and Gulf Region
Executive Officer-Inland-Pacific Region
Executive Officer-Local 30
Executive Officer-Local 27

Thus, under the new provisions of the Constitution the three International officers will have only 27% of the vote, and if the International President acts as Chairman of the General Executive Board, and does not vote except to break a tie, then the International Executive Vice President and the

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*The old section reads as follows:

ARTICLE VII. GENERAL EXECUTIVE BOARD
Section 1. Voting Procedure

a) The vote of each member of the General Executive Board shall be based on the average membership for which dues were paid by his subordinate body into the Organization during the four quarters preceding each General Executive Board Meeting.

The votes of the Offshore Division shall be equally divided among the individuals representing the Offshore Division; namely, International President, International Executive Vice-President, International Secretary-Treasurer and the three Offshore Vice-Presidents.

*The new section reads as follows:

ARTICLE VII. GENERAL EXECUTIVE BOARD
Section 1. Voting Procedure

a) Each member of the General Executive Board shall have one vote and a majority of the votes cast at any meeting of the General Executive Board shall be necessary to adopt any resolution.

b) A majority of the General Executive Board members shall constitute a quorum.

International Secretary will have only 20% of the vote of the General Executive Board between them.

It is respectfully submitted, therefore, that on all counts, this allegation of illegality is baseless, and summary judgment dismissing such allegation from the complaint of the Secretary should be granted.

POINT II. NO BALLOTS WERE SENT TO MEMBERS OF FORMER INLAND LOCAL 47

Little need be said in support of the motion dismissing this allegation from the Secretary's complaint. It is based on an allegation that at the time of the 1971 balloting, members of former Inland Local 47 were in fact members in good standing of the International, and consequently, should have received ballots to vote in that election. In fact, they were not sent ballots by reason of the fact that they were not members in good standing.

In the background material presented earlier, we have set forth the referendum by which the membership of Local 47 voted to disaffiliate from the Union. Such disaffiliation came into effect on October 1, 1970, when the new Constitution became effective, and prior to the balloting in the 1971 election. At no time did the membership vote to rescind such disaffiliation, nor did they at any time vote to re-enter the MM&P.

As also referred to previously, a lawsuit was commenced in this United States District Court for the Southern District of New York by Vincent Larcombe, a former Vice-President of Local 47, seeking to set aside the ILA affiliation referendum which took place commencing in August, 1971, a month before the election of officers.

The gravamen of that lawsuit was identical to the claim made by the Secretary with respect to the Local 47 members; that at the time of the referendum ballot on the affiliation, Local 47 members were members in good standing of the MM&P; that they had been denied the right to participate in the affiliation referendum; that such improper denial may have affected the outcome of the affiliation referendum; and that therefore the referendum vote should be set aside.

Extensive discovery was conducted in that lawsuit. Mr. Larcombe was examined and testified that at no time did the membership vote to reaffiliate with the MM&P or revoke the resolution of this affiliation. In fact, no dues had been paid on behalf of Local 47 members to the MM&P for more than six months prior to the election, and consequently, in accord with the Constitution, such members, in any event, stood suspended.

After extensive discovery, the Union brought on a motion for summary judgment dismissing the complaint, based on the fact that Local 47 was not in fact a part of MM&P after October, 1970.

On February 4, 1974, the Honorable Marvin E. Frankel issued a memorandum opinion which commenced as follows:

> Frankel, D.J.
>
> "Defendant presents a powerful motion for summary judgment. Out of the enormous caution with which we are schooled to treat such motions, it will not be granted at this time. As indicated herein, however, the question will be reconsidered within a few months from now, after plaintiff has had ample time to show concrete

> grounds of opposition which are adumbrated but scarcely presented now."

Judge Frankel went on to point out that from the matters presented to him on the motion for summary judgment, there was no visible support for the plaintiff's contention that Local 47 was in the MM&P in August 1971. Judge Frankel's over-abundance of concern related solely to one point made in the papers submitted in opposition to the motion-and that was, that the plaintiff wished to depose Captain O'Callaghan, alleging that evidence thus obtained "will or may" reveal that there was a triable issue as to whether there was reaffiliation at a material time. Judge Frankel was hardly overwhelmed by this argument, and with respect to it stated as follows:

> "The only point that serves (if barely) to avoid the judgment defendant seeks is the claim that plaintiff has sought, but has thus far not had, the deposition of the International President and the accompanying suggestion that evidence thus obtained will or may reveal that there is a triable issue as to whether there was reaffiliation at a material time. This submission is not imposing; the court is frankly skeptical that discovery will reveal the now missing ground for this action. Nevertheless, given the familiar animus against judgment without trial where something may yet turn up to be tried,

> the court will allow a reasonable time for plaintiff to have discovery and attempt to buttress meaningfully his opposition to the instant motion."

Counsel for plaintiff, apparently acknowledging the futility of even this last chance offered by Judge Frankel, not even bothered to take the testimony of Captain O'Callaghan, but, rather, on May 1, 1974 entered into a stipulation discontinuing the action with prejudice. Annexed hereto as Exhibit G is a copy of such stipulation.

Another lawsuit was also brought in the United States District Court for the Northern District of Ohio, Eastern Division which also involved the question of the status of Local 47, *vis a vis* the MM&P after October 1970. This suit was also dismissed with prejudice, no finding having been made that Local 47 was affiliated with the MM&P after October 1970. Attached hereto as Exhibit I is a copy of such dismissal.

Naturally, there is no claim that Local 47 members would now be entitled to vote, and in the 1974 election no such claim has been made.

From the foregoing, it is clear that no violation was committed by reason of the failure to send ballots to former Inland Local 47. Summary judgment dismissing this allegation from the Secretary's complaint should be granted.

POINT III. NON-POSTMARKED BALLOTS WERE NOT BEING COUNTED

A challenge was made to the International Ballot Committee by a number of candidates opposing O'Callaghan and the O'Callaghan slate protesting the counting of any ballots that were in envelopes not bearing a postmark. Such challenge apparently was based on some supposition that any such non-postmarked ballot must have been surreptiously "stuffed" into the ballot box, and therefore were not validly cast by an organization member. In response to such challenge, the International Ballot Committee ruled that such non-postmarked ballots would not be counted, finding authority for such ruling in the International Constitution.

There were some 700 of these non-postmarked non-counted ballots in all.

After the final tabulations were in, the losing candidates, who earlier had challenged the non-postmarked ballots, now changed their position and filed a complaint with the Secretary of Labor charging that these non-postmarked ballots should be counted, since the failure to do so disenfranchised those persons who had sent them in.

The question of whether the International Ballot Committee's ruling not to count the non-postmarked ballots was in accordance with the International Constitution, need not be reached on this issue, since the failure to count these non-postmarked ballots did not affect the outcome of any of the elections.

In its discovery proceedings, representatives of the Secretary of Labor did in fact open these non-postmarked ballots and tallied the results. At the deposition of Brian O'Hanlon, the Secretary of Labor's agent who was in charge of the tally of these non-postmarked ballots, he testified that the failure to count such ballots did not affect the outcome of any election.

That is, by adding the non-postmarked ballots to the total shown on the AAA certification of results (Exhibit M to plaintiff's 9(g) Statement) no change was made in the results of any election.*

Therefore, in view of the fact that the failure to count these ballots did not affect the outcome of any election, summary judgment should be granted dismissing this allegation from the plaintiff's complaint.

Point IV. THE MEMBERSHIP LISTS WERE MAINTAINED FOR INSPECTION AND WERE AVAILABLE TO CANDIDATES AT THE AAA'S OFFICES IN NEW YORK, RATHER THAN IN EACH OF THE PORTS

The Secretary bases this claim (see his Memorandum Page 109) on the fact that Captain O'Callaghan had "announced" that membership lists would be available for inspection in Local ports. Such announcement by Captain O'Callaghan, however, was not an announcement by the International Ballot Committee, who pursuant to the Constitution and By-Laws, was the only body authorized to supervise the election. Moreover, such O'Callaghan announcement was made before the Ballot Committee was elected at the International Convention.

The decision subsequently made by the International Ballot Committee to permit inspection of the membership lists only in New York was a reasonable one and not violative of any provision of the Constitution or the By-Laws. The issue of the sanctity of mailing lists was of substantial concern to the

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* This issue is not present in the 1974 election just held.

International Ballot Committee. As described previously, the MM&P at this time was under intensive attack by the Marine Engineers Beneficial Association with respect to primacy of the licensed deck officers aboard the vessels, and, more directly, by a frontal attack on the traditional jurisdiction of the MM&P in their representation of such deck officers. They were ardently campaigning against the affiliation with the ILA. An MM&P mailing list in the hands of these enemies would be a powerful tool.

It was for this reason among others, that the International Ballot Committee ruled that the membership lists would be made available only in New York, at the offices of the AAA, where its security could be maintained. Such availability was fully within and met the requirements of 29 U.S.C. §481.

Further, such a procedure was within the proper authority of the International Ballot Committee to declare. Additionally, it in no way discriminated against any candidates, nor affected the outcome of the election.

The slates and candidates in opposition to the incumbents had numerous representatives in the Port of New York, and, in particular, their counsel, Burton Hall. Inspection of these lists could have been made by any such candidates' representative, and, in fact, examinations by candidates opposing the O'Callaghan slate were made.

The equal access to the membership lists in the New York office of the AAA violated no provision of the Union's Constitution or their By-Laws. Such procedure did not affect the outcome of the election, and consequently summary judgment dismissing this allegation from the Secretary's complaint should be granted.

POINT V. THE DISTRIBUTION OF CAMPAIGN LITERATURE WAS MADE THROUGH THE AAA OFFICE IN NEW YORK RATHER THAN IN EACH OF THE PORTS

This is a companion complaint to the one above dealing with the membership lists being available only in New York and, is equally without merit.

It was for the same reasons of security of the membership lists that the International Ballot Committee, properly within their authority, directed that all mailings be done through the AAA office in New York.

No provision or law or the Union's Constitution or the By-Laws required anything to the contrary. This was a reasonable decision of the International Ballot Committee and in no way discriminated against any of the candidates for office in any particular port. All canidates - whether they were incumbents or insurgents were obliged to use the mailing service through the office of the AAA in New York.

Minutes of the Ballot Committee relating to this decision have been furnished to the Secretary of Labor. Such decision reflected in the minutes of August 31, 1971, reads as follows:

> "Mrs. Carlson and Mr. Tannenbaum of the American Arbitration Association joined the meeting at 1525 hours. There was a discussion of the use of mailing services for the distribution of campaign literature by candidates. It was decided that the confidential nature of the

> Union's address list could not be protected if the lists were available to numerous commercial mailing services. Also, costs to the candidates could vary significantly from one city to another. Motion was made, seconded and adopted to use the American Arbitration Association as the independent mailing service for the distribution of campaign literature. A further motion was made, seconded and adopted that the AAA promptly notify each candidate for office of the procedures, cost and other necessary information for the mailing of literature and that each candidate be given an opportunity to mail literature prior to the mailing of ballots."

In fact such notice was promptly sent by the AAA to all of the candidates on an equal, non-discriminatory basis.

This procedure adopted by the International Ballot Committee was entirely proper, violated no law or provision of the Union's Constitution or By-Laws, and did not affect the outcome of the election. Summary Judgment should be granted dismissing this allegation from the Secretary's complaint.

CONCLUDING REMARKS

In this affidavit and the other papers which accompany it, the Union has shown that the five grounds urged by the Secretary on his motion for summary judgment are without substance. Wholly apart from that, the Secretary's motion, based on only the few alleged grounds, and remaining silent on other alleged violations claimed in its complaint, is fatally defective.

If the Court finds for the Secretary in a case of this type, it can declare the election under attack void and direct the conduct of a new election under supervision of the Secretary, and "so far as lawful and practicable, in conformity with the Constitution and By-Laws of the labor organization." 29 U.S.C. §482(c).

Plaintiff in his memorandum on this motion and in his complaint alleges other violations relating to the Union's Constitution and By-Laws. Without passing on these other alleged violations, a summary judgment motion is incomplete and inconclusive since no court ruling has been made on the legality of the Constitution and/or By-Laws provisions to be followed in the supervised election.

Such a procedure would lead to a proliferation of litigation and an inconclusive result from the supervised election. That is, a candidate who lost in the supervised election could turn around and complain about that election on the basis of a carry-over provision of the Constitution or By-Laws which had been claimed originally to be violative of law, but which was not the subject of a ruling by the Court. This potential for continued litigation was never intended, and would defeat the finality of result that a supervised election was designed to accomplish.

If the Secretary brings a motion for Summary Judgment, he must present it on every allegation of wrongdoing which he set forth in his complaint, or, if not, he must specifically abandon his claims with respect to any alleged violations not discussed. This would be exactly the situation at trial. The Secretary, were he to proceed to trial on the merits, could not split his causes of action and say "I will try the case on point A, B and C and later on I will ask for another trial on D, E and F." There must be a completeness of decision at one time so that the remedy of a new election under the supervision of the Secretary, can also be complete without the possibility of additional unresolved violations being alleged after such election is over.

UNION'S INDEPENDENT MOTION

The intervening election and the circumstances revealed from that election, has rendered the Secretary's lawsuit, in this particular case, moot. Since the rationale for ordering a new supervised election stated in the Glass Bottle Blowers case is not present here, this Court, in its discretion, should dismiss the complaint of the Secretary.

Alternatively, if the entire complaint is not dismissed, summary judgment dismissing those specific allegations to which the union has cross-moved and independently moved should be granted.

WHEREFORE, the Union respectfully requests that the plaintiff's motion for summary judgment be denied and the

Union's motion for summary judgment be granted.

MARVIN SCHWARTZ

Sworn to before me this

2nd day of January, 1975.

Eileen M Lefebure

NOTARY PUBLIC

EILEEN M. LEFEBURE
Notary Public, State of New York
No. 31-4600434
Qualified in New York County
Term Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---------------------------------------x

JAMES D. HODGSON, Secretary of Labor,
United States Department of Labor,

Plaintiff,

-against-

INTERNATIONAL ORGANIZATION OF MASTERS,
MATES AND PILOTS, INTERNATIONAL MARITIME DIVISION, ILA, AFL-CIO,

Defendant

---------------------------------------x

72 Civ. 5031

AFFIDAVIT

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

KENNETH CAMISA, being duly sworn, deposes and says:

I am a Vice President of the Martin E. Segal Company and, during the period May 1968 through July 1972 I was Research Director for the International Organization of Masters, Mates and Pilots, the defendant in this case. I submit this affidavit in opposition to the plaintiff's motion for summary judgment.

As Research Director for the defendant, I was intimately involved in the proceedings relating to the Union's 1971 election. I know from my own personal knowledge that there was no purposeful delay in the mailing out of the ballots, nor, in fact, any "delay" as such. The International Ballot Committee and the other persons involved in the preparation of the 1971 election ballots worked expeditiously and diligently on the problems involved in preparing the ballot, and, in my opinion, in view of the difficulties entailed, it was remarkable that the ballots were prepared and mailed out as quickly as they were.

Following the Union's 60th Annual Convention which was held in July 1971, two referendum ballots had to be prepared for submission to the membership. One of these ballots was in connection with the affiliation of the MM&P with the ILA, and the other was the election ballot for the International Officers as well as for all Offshore Division officers and all Pilots Division officers.

The problems pertaining to the preparation of the ballots for the election of officers, were much greater than those involving the affiliation referendum. The Offshore Division had become fully formed prior to the balloting involved. However, the membership records of the former Offshore locals, which were transferred on a piece-meal basis to the Offshore Division office, were still being up-dated and corrected in connection with their being placed on computer.

Specifically, in view of the formation of the new omnibus Offshore Division, and the ability of a member to pay Offshore dues at any port, the problem of pigeonholing a particular Offshore Division member into the former Local to which he belonged, was a constant and continuing one. Reporting such payments to the Offshore Division office, with the requisite information necessary for a proper computer print, was not uniform and required considerable checking and follow-up.

However, this problem - of identifying an Offshore Division member by the former Local to which he belonged - was not one that involved the balloting on the affiliation vote, but was one crucial to the balloting on the election of officers.

That is, in order to prepare and send out the ballots for the affiliation referendum, it was only necessary to know that a certain individual was a member of the Offshore Division, since the voting on the affiliation ballot was to be recorded only on a division basis, where the division was already fully formed.

This was in distinction to the balloting for the elective offices of the Offshore Division, where the balloting had to be on a port by port basis, since, in this transitional election, only the members of the former locals could vote for the officials in those ports.

Consequently, in order to prepare an accurate mailing list for the election of officers, it was necessary to double check with the former local on its membership list, in those cases where records at the Offshore headquarters only indicated that a man belonged to the Offshore Division, and did not show his past local affiliation. This was a very detailed and time-consuming process, which did not have to take place in connection with the affiliation ballot, since there was no need to know, for that balloting, what the individual's former local had been.

In addition, the affiliation referendum, involved the preparation of only one form of ballot. As distinguished from this, it was necessary to prepare nine separate ballots for the Offshore Division alone in the election balloting, since each former local was voting separately for its own offices. There were some 50 different offices involved in the Offshore Division, plus convention delegates from each of the ports. All told, there were more than 175 candidates for all of the offices that were to be voted for in the 1971 election. Exhibits D1 to D9 of plaintiff's Rule 9(g) Statement, are copies of the different Offshore Division ballots.

The problem of designing the election ballots and designating the positions of each of the candidates on these nine separate ballots in order to insure fairness to all, was also time-consuming. Apparently it was successful, since I have been informed that no challenge as to this aspect of the balloting procedures has been made.

In addition to the election ballots themselves, the Offshore Division prepared a special supplement to the Newspaper which had to be sent to the Offshore Division members at the same time as the ballots. This supplement was to contain pictures and statements from all candidates for Offshore Division office and candidates for convention delegates. This special election supplement was a 20 page broad sheet, whose preparation was extremely time-consuming.

The preparation of this special election supplement was required pursuant to the Offshore Division By-Laws Article V, Section 4, which states as follows:

> Section 4.
>
> There shall be a minimum of ninety (90) day voting period for the election of officers simultaneous with the election of International officers. At the outset of and during the said election period, each candidate shall be allowed equal space in the Organization's official publication to present his qualifications, views and photograph subject to reasonable rules uniformly imposed by the General Executive Board.

The newly-elected official shall take office on January 1.

THE INTERNATIONAL CONSTITUTION

The new Constitution of the International which became effective in October 1970, was the first document to be drafted providing for the massive restructuring of the Union. I was personally involved with the drafting of such document.

The provision for the mailing out of the ballots not later than the thirtieth day following the close of the nomination period, (Article V, Section 8(d)) related solely to the ballots for only three officers - the International President, the International Executive Vice President and the International Secretary-Treasurer. At the time that the Constitution was drafted and approved by the Convention delegates, none of the Offshore Division By-Laws had as yet been prepared.

Subsequent to the drafting of the International Constitution and its approval by the Convention delegates for later submission to the membership for ratification, the Offshore Division By-Laws were drafted. I also participated in this drafting.

The Offshore Division By-Laws provided, in Article V, that the election of the Offshore Division officers was to be conducted along with the election for the International officers, and to be supervised by the same International Ballot Committee which was to supervise the balloting for the International officers. Similarly, the Offshore Division election was to be conducted by the same impartial balloting agency that the Convention selected for the International election.

The AAA was selected by the Convention to conduct the election of officers, as well as the ILA affiliation referendum. In discussing the balloting with the AAA, they had indicated to me and to the International Ballot Committee their reluctance about the sending out of the two ballots too close together since they were concerned that it might be confusing to the membership who might mistakenly return ballots in the wrong envelope. This could have resulted in the voiding of their votes in both elections, which could have disenfranchised members from their right to have their ballot counted. In view of this, the AAA was completely in accord with the time schedule that eventually was followed, and at no time did they urge that the election ballots be sent out any earlier than they were.

The Union's staff to assist the ballot committee and work on the checking of membership, the dues status, and other matters relating to the election of officers, was very limited. The work primarily fell to me and to the Union controller. The ballot committee in addition to the mechanics of the balloting had to review and rule on challenges that had been raised by candidates.

In addition to the work relating to the affiliation referendum and the election of officers, with the detail and problems described above, other necessary activities of the Union were also going on at this time. These other activities required attention and work by me and the other people at the union office. In particular, it was about August 14, 1971, right in the midst of everything, that President Nixon established his wage and price freeze. Some attention had to be given to this, since the Union's contract was due to expire in June the next year, and the membership would naturally, be making inquiries as to what the freeze meant for the future. Thought had to be given with respect to new contract demands that would be presented by the negotiating committee in advance of the contract's expiration.

I am prepared to testify in full with respect to not only the other matters which were going on in the Union at the time which consumed my attention, but also with more detail as to the matters I have described above relating to the preparation of the membership lists and the ballots for the affiliation referendum and the election of officers.

In sum, it is my opinion and belief that no violation was committed with respect to the date on which the ballots for the 1971 election were sent out.

Kenneth Camisa
KENNETH CAMISA

Sworn to before me this
22nd day of January, 1975.

Eileen M. Lefebure
Notary Public

EILEEN M. LEFEBURE
Notary Public, State of New York
No. 31-4600[illegible]4
Qualified in New York County
Term Expires March 30, 1976

A 472

IN THE UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT
MAR 17 2 59 PM '73
S.D. OF N.Y.

PETER J. BRENNAN,
Secretary of Labor,
United States Department of Labor,
Plaintiff,

v.

INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, INTERNATIONAL MARITIME DIVISION, ILA, AFL-CIO,
Defendant.

CIVIL ACTION
NO. 72 Civ. 5031 CBM

PLAINTIFF'S FIRST SET OF INTERROGATORIES

The plaintiff requests that the defendant answer under oath, in accordance with Rule 33 of the Federal Rules of Civil Procedure, the following interrogatories:

1. State whether defendant maintained during the period July 1, 1971, to present, any collective bargaining agreements with any employers.

2. If the answer to the foregoing interrogatory is in the affirmative, specify the following as to each agreement:

(a) The date of such collective bargaining agreement and the name of each employer or group of employers with whom it is or was maintained;

(b) The number of members of defendant who are covered by each such collective bargaining agreement;

(c) Period covered by each such collective bargaining agreement; and

(d) The general terms and provisions of each such collective bargaining agreement.

(e) Will defendant voluntarily attach a copy of each collective bargaining agreement referred to in the answer to this interrogatory?

3. State whether defendant is or was, during the period July 1, 1971 to present, the certified representative of any employees under the provisions of the National Labor Relations Act.

4. If the answer to Interrogatory No. 3 is in the affirmative, specify in detail the following as to each certification:

(a) The date of certification, and the name of each employer or group of employers having employees for whom defendant is the certified representative;

(b) The number of employees for whom defendant is the certified representative;

(c) The period covered by each such certification; and

(d) Will defendant voluntarily attach a copy of each certification referred to in the answer to this interrogatory?

5. State whether defendant is affiliated with the International Longshoremen's Association.

6. If the answer to Interrogatory No. 5 is in the affirmative, set forth the date of such affiliation, and specify in detail the general provisions of the affiliation.

7. If the answer to Interrogatory No. 5 is in the affirmative, state whether the affiliation between defendant and the International Longshoremen's Association was reduced to writing, and if so, will defendant voluntarily attach a copy of this writing to defendant's answer to these interrogatories?

8. Set forth in detail the entire procedure which members in good standing of defendant were required to follow in exhausting internal remedies relative to a protest of the conduct of defendant's International election of officers, citing with respect to each such procedure the applicable sections of defendant's Constitution and/or By-Laws.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- x

JAMES D. HODGSON, Secretary of
Labor, U. S. Department of Labor,

Plaintiff,

-against-

72 Civ. 5031 CBM

INTERNATIONAL ORGANIZATION OF
MASTERS, MATES and PILOTS,
INTERNATIONAL MARITIME DIVISION,
ILA, AFL-CIO,

Defendant.

- x

ANSWERS TO PLAINTIFF'S INTERROGATORIES BY DEFENDANT, PURSUANT TO THE PROVISIONS OF RULE 33 OF THE FEDERAL RULES OF CIVIL PROCEDURE.

1. Yes.

2. See copy of Master Collective Bargaining Agreement attached as Exhibit "A".

(a) See page 6 of the attached Agreement, Exhibit "A".

(b) 6,500 members.

(c) See page 2 of the attached Collective Bargaining Agreement, Exhibit "A".

(d) See text of the Collective Bargaining Agreement, Exhibit "A".

(e) See attached Collective Bargaining Agreement, Exhibit "A".

3. No.

4. See answer to number "3".

5. Yes

6. Attached hereto (as Exhibit "B") is a copy of the International Constitution. The terms of the affiliation

(b) Letter to the candidates.

32. Yes.

33. Campaign literature distributed by the American Arbitration Association.

34. (a) The American Arbitration Association

(b) By letter to the candidates.

35. The complaint was filed on March 29, 1972, on behalf of the several complainants, among whom was Mr. Jack Ofelt (see plaintiff's answer to interrogatory number "11(a)" and Exhibit "J" annexed to the answers to plaintiff's interrogatories). The final intra-union remedy available to the complainants was an appeal to the General Executive Board. (See plaintiff's answer to interrogatory number "9(a)".) The General Executive Board entertained the appeal on January 25 and 26, 1972. (See Exhibit "I" to plaintiff's answers to defendant's interrogatories). The complainants knew that the General Executive Board was meeting on January 25 and 26, to take up the appeal. The denial of the appeal was made on January 26, 1972. 29 U.S.C. Section 482, requires that a complaint be filed with the Department of Labor within one calendar month after the exhaustion of intra-union remedies. The complainants should have filed their complaint with the Secretary of Labor no later than February 26, 1972. Consequently, complainants have not complied with the statutory requirement.

Dated: New York, New York
October 21, 1974.

Yours, etc.,

MARVIN SCHWARTZ, ESQ.
Attorney for Defendant
243 Waverly Place
New York, New York 10014
Tel.: 212 691-2250

TO:
PAUL J. CURRAN, ESQ.
UNITED STATES ATTORNEY for the
Southern District of New York
Attorney for Plaintiff
United States Courthouse
Foley Square
New York, New York 10007

Attention: DENNISON YOUNG, Jr., Esq.

A 476

1014a

THE MASTER, MATE & PILOT

I.L.A.

INTERNATIONAL MARINE DIVISION OF ILA/AFL-CIO

OFFICIAL VOICE OF INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS

MASTER COLLECTIVE BARGAINING AGREEMENT

(Dry Cargo and Tanker Sections)

Covering All Vessels Under Contract

with the

INTERNATIONAL ORGANIZATION OF MASTERS MATES AND PILOTS—OFFSHORE DIVISION

EDITOR'S NOTE:

The provisions of this agreement apply to all vessels (dry cargo, passenger and tanker) except where specifically noted otherwise, such as in the following manner:

TANKER: Provisions with this introduction apply only to Tanker vessels.

(PMA ONLY): Provisions with this introduction apply only to PMA vessels.

ALL CONTRACT COMPANIES EXCEPT PMA: Provisions with this introduction apply to all vessels except PMA vessels.

EXHIBIT "A"

PREAMBLE

This Agreement made as of the 16th day of June, 1972, by and between the INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, AFL-CIO (herein the "Organization" or "Union") and those associations and/or companies listed (herein the "Company"), any of its subsidiaries or affiliates with respect to any U.S.-flag oceangoing vessel which it either owns or operates as an agent or under bareboat charter, and as further described in this Agreement.

Albany River Transport, Inc.
•Albatross Tanker Corp.
Amberjack Maritime Corporation
•Amerada Hess Corp.
American Condor Steamship Corp.
•American Eagle Tanker Corp.
American Foreign Steamship Corporation
American Mail Line
American President Lines
American Rice Steamship Corp.
•Amoco Shipping Corp.
Bethlehem Steel Corporation
Bonito Maritime Corp.
Bulk Food Carriers, Inc.
Calmar Steamship Corporation
Cefor Cargo Ships
Central Gulf Lines, Inc.
•Colonial Tankers Corp.
•Connecticut Transport, Inc.
Delta Steamship Lines, Inc.
Dolphin Maritime Corp.
•Dover Shipping Co., Inc.
•Eagle Terminal Tankers, Inc.
Empire Transport, Inc.
Excelsior Marine Corp.
Farrell Lines, Inc.
Freighters, Inc.
General Cargo Corporation
•Globe Seaways, Inc.
•Hendy International Company
••Hudson Waterways Corp.
•Intercontinental Bulktank Corp.
Intercontinental Carriers, Inc.
Interseas Bulk Carriers, Inc.
Isthmian Lines, Inc.
James River Transport, Inc.
•Keva Corporation
•Keystone Shipping Co.
•Keystone Tankship Corporation
•Charles Kurz & Co., Inc.
•Louisiana Sulphur Carriers, Inc.
Lykes Bros. Steamship Co., Inc.
Maimonides Transport Corp.
•Manhattan Tankers, Inc.
•Marine Carriers Corp.
••Marine Transport Lines, Inc.
Maritime Service Committee
•Mathiasen's Tanker Industries, Inc.
Matson Navigation Co.
Meadowbrook Transport, Inc.
Mediterranean Marine Lines, Inc.
Mercury Steamship Co., Inc.
Mohawk Transport, Inc.
•Monticello Tanker Co.
•Montpelier Tanker Co.
Moore-McCormack Lines, Inc.
•Mount Vernon Tanker Co.
•Mount Washington Tanker Co
•Nashbulk, Inc.
•National Transport Corp.
•Nautilus Petroleum Carriers Corp.
•Newport Tankers Corp.
Ocean Clippers, Inc
•Ocean Tankships Corp.
•Ocean Transportation Co., Inc.
Ogden Merrimac Transport, Inc
Ogden Sacramento Transport, Inc.
••Ogden Sea Transport, Inc.
•Ogden Wabash Transport, Inc
•Ogden Willamette Transport, Inc.
Olympic Steamship Company
Oswego Steamship Co., Inc.
•Overseas Bulktank Corporation
••Overseas Oil Carriers, Inc.
Pacific Far East Line, Inc.
Pacific Maritime Association
•Pelican Marine Carriers, Inc.
Penn Navigation Co.
Penn Shipping Co., Inc.
•Penn Tanker Company
People-to-People Health Foundation, Inc.
Pioneer Maritime Corp.
Platte Transport, Inc.
•Plaza Shipping, Inc.
Prudential-Grace Lines, Inc.
Rio Grande Transport, Inc.
•Rye Marine Corp.
Sea-Land Service, Inc.
•Sea Tankers, Inc.
Seatrain Lines, Inc.
•Sea Transport Corporation
Sovan Navigation Corp.
States Marine International
States Steamship Co.
•Tanker Service Committee
•Texas City Tankers Corp.
Transamerican Trailer Transport, Inc.
•Transeastern Shipping Corp.
Transport Commercial, Inc.
•Trinidad Corporation
•United Maritime Corp.
United States Lines, Inc.
•Vancor Steamship Corp.
Vantage Steamship Corp.
Verity Marine Corp.
Victory Carriers, Inc.
Waterman Steamship Corporation
Westmount Shipping Corp.
•World Wide Tankers

•Tanker
••Tanker and Dry Cargo

EXHIBIT "A"

10160

SECTION I. EFFECTIVE DATE AND EXPIRATION DATE OF THE AGREEMENT; INCREASES

1. The Organization and the Company hereby enter into an Agreement effective June 16, 1972, covering conditions of employment, wages, hours and working conditions, said Agreement to be binding upon the parties for a period to and including midnight, June 15, 1975, except as otherwise provided. All such provisions shall be effective as of 12:01 A.M., June 16, 1972, on all ships at sea, or in port, except with respect to such terms as may be otherwise specifically provided.

2. There shall be a 6% increase of base monthly wages and night relief rates as of June 16, 1972.

3. Effective June 16, 1973, the Company shall grant, and the Organization shall have the right to allocate an amount available for wages and other benefits of 8.089 per man per day, and an amount available for fringe benefits or other purposes as may be permitted by existing law of 1.030 per man per day.

4. Effective June 16, 1974, the Company shall grant, and the Organization shall have the right to allocate an amount available for wages and other benefits of 8.591 per man per day, and an amount available for fringe benefits or other purposes as may be permitted by existing law of 1.093 per man per day.

5. In the event of a dispute or disagreement between the parties as to the manner of allocation of these increases, any such dispute or disagreement shall be submitted to arbitration before the contract arbitrator provided under the Agreement.

6. The Organization, notwithstanding the aforesaid, shall have the right on sixty (60) days' written notice to the Company prior to June 16, 1974, to reopen the Agreement in lieu of (4) above, in which instance the provisions of Section XXXVI (a) of the Agreement shall not apply as of 12:01 A.M., June 16, 1974.

SECTION II. RECOGNITION AND PREFERENCE OF EMPLOYMENT

1. The Company recognizes the Organization as the sole representative of its Licensed Deck Officers (except where specifically otherwise provided, the term "Licensed Deck Officers," whenever and wherever used in this Agreement, includes the Master) on U.S.-flag oceangoing vessels, for the purpose of collective bargaining.

The parties agree that it shall be the essence of the Agreement that its administration shall be confined exclusively to the parties.

The Company will not engage in activities or assist or encourage Licensed Deck Officers, or others who are not members of the Organization, in activities calculated to undermine the status of the Organization as the sole collective bargaining representative. The Company will not attempt to influence or persuade any member of the Organization to withdraw therefrom nor will the Company, in any way, attempt to interfere with the internal affairs of the Organization.

All Employees who are presently members in good standing of the Organization, or any future members, shall be required to remain members in good standing during the life of this Agreement in order to continue their present employment or to be eligible for future employment subject to all provisions of this Agreement, provided that the Company shall not be required to take action until first notified by the Organization, that such Employee has lost his good standing.

Subject to all other provisions of this Agreement, all members in good standing of the Offshore Division of the Organization shall have an equal right to bid for all job opportunities which are open to bidding, and all former Group Shipping classifications and priorities are abolished. To assure the fair and equitable distribution of work opportunities among Licensed Deck Officers who are members in good standing of the Offshore Division, priority of employment and dispatch of jobs which are open to bidding shall be given to the Licensed Deck Officer on the Offshore Shipping List longest unemployed in the port where the vacancy occurs.

2. Masters and Chief Officers

a. The Company shall have the right once to designate, by name, one permanent Master and, by name, one permanent Chief Officer from the ranks of its Licensed Deck Officers for each active vessel by name, within its fleet, provided they maintain their membership in good standing in the Organization and the Company and the Master or Chief Officer desires such employment to continue. This initial designation list shall be submitted to the Organization prior to the signing of this Agreement. Continuous employment shall not be deemed to have been broken if the Master or Chief Officer is on an authorized leave of absence provided he does not, during such period, accept employment with any other Company other than Port Relief Officer work. "Port Relief Officer work" shall mean Relief Officer work as described in Section XVI.

b. Subject to other provisions of this Agreement, when a Master or Chief Officer's vacancy occurs, either permanent or relief, the Company shall have the right to select a new Master or Chief Officer provided that the new Licensed Deck Officer has been a member of the Organization for a period of not less than five (5) years and has sailed at least two (2) years as a Licensed Deck Officer aboard MM&P-contract vessels and is registered on the Offshore Shipping List of the Organization in the port where the vacancy occurs as being available for selection by a Company. If a Licensed Deck Officer is registered on an Offshore Shipping List in a port, he may have his name removed from that list at any time and register on the Offshore Shipping List in another port, at his discretion. A Master or Chief Officer who has so registered on the Offshore Shipping List as being available for selection by a Company shall not be eligible to bid for jobs off the Board.

A Master or Chief Officer, not selected, but shipped off the Board through the offices of the Organization, must meet the same requirements with regard to membership and seatime.

Exhibit A

c. A Master or Chief Officer, when transferred or cleared, shall appear in person at the appropriate office of the Organization and shall clear through such office. Such Licensed Deck Officer shall clear at the office of the Organization in the port where he joins the vessel or the office of the Organization having jurisdiction of the port. Deliberate failure to so clear shall be grounds for appropriate disciplinary action by the Organization, but shall impose no obligation on the Company, except as may otherwise be required by this Agreement.

d. Any Master or Chief Officer employed on any vessel of the Company, who is absent from the vessel by reason of vacation, illness or other legitimate leave of absence, may not be transferred away from his regular position to any other vessel without the written consent of the individual Licensed Deck Officer and the Organization. The consent of the Organization shall not be arbitrarily withheld.

e. Each Company shall adhere to the policy of promotion or demotion from within the ranks of its permanent Licensed Deck Officers, and seniority shall prevail unless the necessary qualifications are unequal. However, a permanent Master named on the initial designation list cannot be demoted to Chief Officer. All promotions will be made with due regard to the practicalities of the situation such as the availability of the Licensed Deck Officers for promotion.

f. Any Licensed Deck Officer, who was entitled to, and eligible for, selection or promotion as Master from within the ranks of the Company's Licensed Deck Officers, but was not available, shall upon becoming available, assume such employment.

g. The Organization shall be notified when a vessel is withdrawn from service for repairs, or any other reason, in a timely manner.

A Master or Chief Officer on such vessel shall indicate, in writing, on a Leave of Absence Form, to the Company and the Organization, at the time of the vessel's withdrawal from service, whether he desires to return to his vessel in his former capacity. In such cases, the Master or Chief Officer shall be granted a leave of absence for the period of the vessel's withdrawal from service.

If a Master or Chief Officer on such vessel does not desire to return to the vessel, he shall indicate, in writing, whether he desires to remain with the Company, or to transfer to another vessel, or to take a leave of absence consistent with the provisions of the Agreement.

Masters or Chief Officers who have accumulated one hundred eighty (180) days' employment aboard a vessel shall be relieved by the Company upon the conclusion of the voyage in which the one hundred eighty (180) day period occurs. Whenever a Master or Chief Officer leaves his vessel for any reason and has earned thirty (30) days of vacation, he shall take all of his earned vacation plus an additional period of time off without pay, which shall be equivalent to one-half of such period of earned vacation, before he can be re-employed.

The Company shall have the obligation on those vessels on voyages beyond one hundred and eighty (180) days, or whose trading route is permanently or semi-permanently outside the United States, to return, at Company expense, the Masters and Chief Officers, and to transport the newly-assigned Master and Chief Officer to the vessel at the Company's expense. Such new assignments shall be for a period not to exceed one hundred eighty (180) days. If the vessel's expected arrival at a U. S. port is within thirty (30) days after the one hundred eighty (180) day period, and provided there is no loading or discharging of cargo during that thirty (30) day period, it shall not be necessary to terminate the Master and Chief Officer's employment in a foreign port.

If, for any reason, a Company fails to terminate a Master or Chief Officer in accordance with the foregoing provisions, the Company shall pay to the MM&P Special Welfare Fund an amount equal to his total earnings and appropriate contributions to the several MM&P Plans for that period in excess of his authorized employment as above.

3. Licensed Deck Officer below Rank of Chief Officer

a. Effective on the day of signing of the Agreement, with the exception of Masters or Chief Officers, all other Licensed Deck Officer positions must be shipped from the offices of the Organization, off the Board in the port where the vacancy occurs, for a period not to exceed one hundred eighty (180) days, provided that Licensed Deck Officers so named by the Organization shall be qualified to fill the available positions. Whenever such Licensed Deck Officer leaves his vessel for any reason, and has earned thirty (30) days of vacation, he shall take all of his earned vacation plus an additional period of time off without pay, which shall be equivalent to one-half of such period of earned vacation, before he can be re-employed.

b. All permanent Licensed Deck Officers presently in the Company's employ may continue to sail from the date of signing this Agreement for a period not to exceed one hundred eighty (180) days, or until their vacation is due, or until they leave the vessel for any reason whatsoever, whichever occurs first, and at this time the Company shall terminate the permanent employment of the Licensed Deck Officer below the rank of Chief Officer, and a replacement shall be furnished through the offices of the Organization and shipped off the Board for a period not to exceed one hundred eighty (180) days.

c. Former permanent Licensed Deck Officers, regardless of rank, on authorized leaves of absence which commenced prior to the date of signing this Agreement, shall upon completion of their leaves of absence, be permitted to return to their vessels for a period not to exceed one hundred eighty (180) days, or until their vacation is due, or they leave the vessel for any reason whatsoever, whichever occurs first, at which time the employment of Licensed Deck Officers below the rank of Chief Officer shall be terminated by the Company and a replacement shall be furnished through the offices of the Organization and shipped off the Board for a period not to exceed one hundred eighty (180) days.

d. Upon the signing of this Agreement the Company shall furnish to the Headquarters Office of the Organization a list of all permanent Employees on authorized leaves of absence as permitted under the terms of the former col-

Exhibit A

lective bargaining agreement. This list shall contain the following:

1. Name of Officer and original date of employment
2. Position and name of vessel to which assigned
3. Reason for leave of absence
4. Date of commencement of leave of absence
5. Expected termination date of leave of absence.

Employees who are working for the Company or the Organization ashore, under an authorized leave of absence, shall have their leaves of absence terminated at the end of a one hundred eighty (180) day period effective from the date of signing this Agreement.

e. Licensed Deck Officers aboard liner type vessels or tank vessels on scheduled runs, who have accumulated one hundred eighty (180) days' employment aboard a vessel shall have their employment terminated by the Company upon the conclusion of the voyage in which the one hundred eighty (180) day period occurs, and a replacement shall be furnished through the offices of the Organization and shipped off the Board for a period not to exceed one hundred eighty (180) days.

Each Company shall have the obligation on those vessels on voyages beyond one hundred eighty (180) days, or whose trading route is permanently or semi-permanently outside the continental United States, to return, at Company expense, the Officers as described above, and to transport the newly-assigned Licensed Deck Officer to the vessel at the Company's expense. Such dispatch shall be for a period not to exceed one hundred eighty (180) days. If the vessel's expected arrival at a U. S. port is within thirty (30) days after the one hundred eighty (180) day period and provided there is no loading or discharging of cargo during that thirty (30) day period, it shall not be necessary to terminate the Licensed Deck Officer's employment in a foreign port.

If, for any reason, a Company fails to terminate a Licensed Deck Officer in acordance with the foregoing provisions, the Company shall pay to the MM&P Special Welfare Fund an amount equal to his total earnings and appropriate contributions to the several MM&P Plans for that period in excess of his authorized employment as above.

4. Hiring Hall Procedure

When placing orders for replacements for any Licensed Deck Officers, the following bidding procedures shall be followed:

a. When a vacancy below the rank of Chief Officer [Ed. Note: Or a Master or Chief Officer shipped off the board in accordance with the second paragraph of subsection 2 (b) above] occurs in a United States port, the office of the Organization having jurisdiction of the port at which the vessel is located at the time when a vacancy occurs, shall be requested to provide such replacement. If that office cannot do so after two (2) job calls, it shall take immediate steps to obtain the replacement from another office of the Organization. The Organization agrees to use its best efforts to obtain the replacement from the closest office of the Organization.

b. When a vacancy occurs outside the contiguous United States, excluding Puerto Rico and Hawaii, and the vessel is scheduled to load or discharge at more than two additional ports or is not due to return to a United States port within thirty (30) days, the Company shall immediately order the replacement through the International Headquarters Office of the Organization located in New York or San Francisco. This provision shall not be applied to cause a delay in sailing. The penalty for violation of this provision shall be wages and all contributions to the several MM&P Plans to the Special Fund referred to in this Agreement.

c. Replacements shall be ordered by an authorized representative of the Company in a timely manner.

d. When ordering a replacement, the Company shall advise the reason for ordering the replacement and the name of the Officer for whom the replacement is being ordered, and the date the replacement job is to be dispatched.

[The next two (2) paragraphs apply to tank ships only]

e. In the hiring and dispatch of jobs above the rank of Third Officer that are open to bidding on tankships, the Company and the Organization re-affirm the policy that only Licensed Deck Officers who are qualified and reliable to supervise the type of work required by the tankship to which they are being dispatched shall continue to be referred for employment. Officers bidding for a Third Officer position who have had previous tankship experience under the authority of their license, or who have qualified themselves for dispatch for tankship service and improve their competency for tankship service through successful completion of a formalized tanker training course such as is afforded at M.I.T.A.G.S. shall have priority of dispatch over an Officer who has not so qualified himself.

With respect to the above, it is the intent of the Parties to progressively upgrade through mutually agreeable training programs, both on board tankships and at M.I.T.A.G.S., the qualifications and reliability of all Licensed Deck Officers actively engaged in the industry in order to meet the impact of environmental protection, pollution, safety, legislation and industry problems.

[The above two (2) paragraphs apply to tankships only]

5. Masters' and Chief Officers' Seniority

a. Except for those Masters and Chief Officers who are named on the initial designation list, seniority for **all** other Licensed Deck Officers is terminated upon the signing of this Agreement. Thereafter, seniority shall accrue only for Masters and Chief Officers, and only in such manner as hereinafter described.

b. After the initial designation permitted at the time of the signing of this Agreement, the seniority of the Masters and Chief Officers so designated shall be measured from their last permanent in-hire date as a Licensed Deck Officer with the Company.

c. In the event a vacancy subsequently occurs for a permanent Master, the newly appointed permanent Master shall be at the bottom of the Masters' seniority list, and his seniority as Master shall commence as of the date he is so employed.

d. In the event a vacancy subsequently occurs for a permanent Chief Officer, the newly appointed permanent Chief Officer [Ed. Note: Or a permanent Chief Officer

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shipped off the board] shall be at the bottom of the Chief Officers' list and his seniority as Chief Officer shall commence as of the date he is so employed. However, in the case of a Chief Officer who has been named on the initial designation list as Chief Officer, and who is promoted to a vacancy for a permanent Master, he shall retain his seniority as permanent Chief Officer. His seniority as Permanent Master shall commence as of the date he is so employed as permanent Master, and his service as permanent Master shall count toward his Chief Officer seniority. Thus, in the event of a contraction of the fleet, such a Licensed Deck Officer shall have the right to a permanent Chief Officer's berth as may be permitted by his last permanent in-hire date as a Licensed Deck Officer of the Company.

e. For purposes of measurement of date of seniority of continuous employment, authorized leaves of absence shall be included in the measurement of unbroken service except as may be otherwise provided in this Agreement. The records of the several MM&P Vacation Plans shall be utilized in the settlement of any seniority disputes which may arise.

f. At the time of the signing of this Agreement, and at the commencement of each calendar quarter thereafter, the Company shall provide the Headquarters Office of the Organization with one copy of its Masters' seniority list and one copy of its Chief Officers' seniority list on a form approved by the Company and the Organization, standard for all Companies. Both forms will require the Officer's name, his original date of hiring for the purposes of continuous employment, his seniority number, the vessel, and the date of assignment of the Licensed Deck Officer to that vessel. The Masters' list will require, in addition, the date of his seniority as Master. The names on these lists shall be in order of seniority with the Company, with the Officer having the longest period of continuous service listed first. Such list shall also show the name of every vessel operated by the Company and the operational status of the vessel. In the event any vessel is laid up, the list shall show the date of withdrawal from service, the reason therefor, and the probable length of layup.

As required in the original designation list, the Masters and Chief Officers must not only be named but must also be assigned to a named vessel. Thus, the number of Masters and Chief Officers on each seniority list may never exceed the number of berths in the active Company fleet.

6. Masters and Chief Officers—Leaves of Absence

a. The following shall be the interpretation of leaves of absence: vacation, illness, family sickness, personal affairs, seasonal lay-ups, unforeseen temporary layoffs, temporary withdrawal from service of less than ninety (90) days and service ashore for the Company or the Organization. Except as provided in this Agreement under the mandatory clauses of the Vacation Section, a Master or Chief Officer, upon request, shall be granted a leave of absence for any of the above specified reasons. [Ed. Note: As per previous contract initial requests must be granted, but renewals are subject to mutual agreement of the Parties.]

b. Continuous employment shall not be deemed to have been broken if the Master or Chief Officer is on leave of absence, provided such Licensed Deck Officer does not, during such period, accept any employment whatsoever related to the maritime industry other than Port Relief Officer work.

c. Leave of Absence Form

A Master of Chief Officer taking any leave of absence under this section shall be required to fill out a "Leave of Absence Form," as prescribed by the Agreement, which shall show:

____
(Steamship Company Name)

IOMM&P LEAVE OF ABSENCE FORM

Date of Request ______________
S.S. # ______________

Officer's Name ______________
Company ______________
Ship ______________

Rank: Master/Chief Officer
(indicate which)
Intended duration of LOA ______________

Desired Date LOA to Begin ______________
Reason for Leave of Absence:

______ Vacation
______ Personal Affairs*
______ Service Ashore for Organization
______ Service Ashore for Company
______ Temporary withdrawal of vessel from service*
______ Personal illness*
______ Illness in the Family*

I certify that on completion of my leave of absence that:

a. I desire to return to the same ship ______ Yes ______ No
b. I will accept a transfer to another vessel ______ Yes ______ No

Signed ______________
Rank ______________
SS/MV ______________
Approved ______________
(Signature of IOMMP Port Official)
Port of ______________

*See Ed. Note in
Subsection 6 (a) above

CC: Officer
IOMM&P (Port of Separation)
IOMM&P (Port of Registry or Company Employee)
Company

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d. At the time of his separation from the vessel, a Licensed Deck Officer shall be required to file the leave of absence form with the office of the Organization closest to the port where his leave of absence commences and also at that port where he registers as a Company employee.

e. When a leave of absence is granted by a Company, the Company shall advise the Organization, telephonically, at the time the replacement is requested, of the name of the Licensed Deck Officer, the purpose, commencement and intended duration of the leave of absence and confirm these facts in writing.

f. Vacation

A Master or Chief Officer, whose vacation is due, must take same and he shall have the following rights, upon the expiration of his vacation. (The term "upon the expiration of his vacation" as used in this subsection shall be deemed to mean the expiration of all of his earned vacation plus an additional period of time off without pay equivalent to the one-half of his earned vacation prior to re-assignment.)

i. A permanent Master shall not be assigned below the rank of Master nor shall he be assigned to relieve another Master who is on vacation or other leave of absence.

ii. A permanent Chief Officer shall not be assigned to relieve another Chief Officer who is on vacation or other leave of absence. A permanent Chief Officer may be assigned to a Master's berth under any conditions, provided it is within his allowable period of employment.

iii. Masters or Chief Officers who have accumulated thirty (30) days of earned vacation may, at their option, go ashore for their vacation at that time.

iv. Masters or Chief Officers returning from leave of absence for illness, sickness in the family, and reasons relating to personal affairs, shall have the same rights as those given for return from vacation.

g. Withdrawal from Service

The Organization shall be notified when a vessel is withdrawn from service for repairs or some other reason.

i. The Licensed Deck Officer on such vessel shall indicate, in writing, on the Leave of Absence Form, to the Company, and the Organization, at the time of the vessel's withdrawal from service, whether he desires to return to the vessel, or will accept permanent transfer to another vessel, or take a leave of absence for some other reason, consistent with other provisions of the Agreement.

ii. When a vessel is permanently withdrawn from service, the fleet seniority list shall be reduced one Master and one Chief Officer. For purposes of this Agreement, a vessel temporarily withdrawn from service shall be considered to be permanently withdrawn from service if out of commission for over ninety (90) days. Exceptional cases shall be subject to agreement of the Parties.

h. Service Ashore for the Employer or the Organization.

Permanent Company Employees working ashore for the Company or the Organization, on a leave of absence granted prior to date of signing this Agreement, shall be terminated from the Company roster or seniority list at the expiration of such one hundred eighty (180) days, commencing from the date of signing this Agreement; provided that at the expiration of such one hundred eighty (180) days, the Licensed Deck Officer shall have the right to be assigned to seagoing employment in accordance with his seniority, consistent with other provisions of this Agreement.

Subsequent to signing this Agreement, only a Master and Chief Officer may be granted a leave of absence in order to work ashore for the Company or the Organization, provided that such shoreside Company work is covered by a collective bargaining agreement between the Company and the Organization. Pension and Welfare contributions shall be maintained for such Licensed Deck Officer who has accrued at least three (3) years' pension credits, provided that he maintains membership in the Organization.

Such Licensed Deck Officer on leave of absence for shoreside employment shall suffer no loss of Company seniority. However, he shall not accumulate seniority while ashore unless by special memorandum of agreement which shall become a permanent part of the Company contract file in the Headquarters of the Organization. If the Licensed Deck Officer ashore later seeks to return to seagoing employment as Master or Chief Officer, he may do so only on the basis of his seniority prior to going ashore, unless otherwise provided. In all cases, the Licensed Deck Officer shall maintain membership in the Organization to be protected by this subsection.

7. Cadets

Cadets are on the vessel for educational purposes only. Cadets shall not be used to perform any of the duties of a Licensed Deck Officer.

8. Non-discrimination

The Company and the Organization shall in no way discriminate against an otherwise qualified Officer because of age, sex, national origin, color, creed or due to nonmembership in the Naval Reserve or the United States Maritime Service or in the case of the Company, because of membership in the Organization and in the case of the Organization subject to its Constitution, By-Laws and Shipping Rules.

9. Shipping Rules

The Shipping Rules of the Organization as of the effective date of this Agreement which are not inconsistent with the terms of this Agreement, shall be deemed to be part of and incorporated in this Agreement.

Shipping Rule changes made after the signing of this Agreement shall not infringe upon nor diminish the Company's rights under this Agreement.

10. Separability Clause

The parties intend that the provisions of this section should be and are in compliance with Federal and State laws. If any part hereof is determined to be in conflict therewith, the parties shall negotiate provisions to the extent necessary to insure compliance and to the extent that such provisions are so determined to be in conflict, they shall be deemed inapplicable.

11. Passes to Organization Representatives

a. Authorized representatives of the Organization shall have the right to go on board ships covered by this Agreement at reasonable times, subject to regulations mu-

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tually satisfactory to the Organization and the Company, for the purpose of consulting with the Licensed Deck personnel employed thereon, except in cases beyond the control of the Company. The names of the authorized representatives shall be furnished to the Company by the Organization. Passes issued in the representatives' names shall be forwarded to the International Headquarters of the Organization no later than two weeks after receipt from the Organization of the names of their representatives.

b. Access to and from such vessels shall be afforded authorized representatives of the Organization in the same manner and at all times as such accessability is available and afforded to crew members and management personnel.

c. The Organization shall take out insurance which will protect the Company and subsidiary or affiliated companies against any claims, loss of life, or injury occurring to a representative of the Organization while on the property or while on board a vessel of any of the above-mentioned Companies while said property or said vessel is owned, chartered, leased, or operated under General Agency Agreement, and shall furnish satisfactory evidence of such insurance for the benefit of the Company and subsidiary or affiliated Companies.

SECTION III. EMPLOYMENT SECURITY

1. Discharge for Cause

a. Nothing in this Agreement shall prevent the Company from discharging any Licensed Deck Officer for just cause. Any Licensed Deck Officer so discharged shall be given a written statement advising of the discharge and an explanation of the reasons for the discharge, no later than twenty-four (24) hours before payoff or termination of the voyage, whichever is sooner. If the offense resulting in the discharge occurs during said twenty-four (24) hour period, the Licensed Deck Officer shall receive prompt notice of discharge and be provided with a written statement of discharge at the time of payoff. Any failure to furnish a written statement of discharge shall establish presumptively that the Licensed Deck Officer has been discharged without just cause. If an Organization representative is present at the time of payoff, he shall also be provided with the written statement of discharge. If an Organization representative is not present at the time of payoff, a copy of the written statement shall be mailed within forty-eight (48) hours to the Organization office nearest to the port of discharge.

If the Licensed Deck Officer does not agree with the discharge, he must notify the Organization office nearest the port of discharge within seventy-two (72) hours after such discharge. Such notification must be in writing.

b. Any dispute arising from such discharge shall be settled in accordance with the grievance procedures of this Agreement.

2. Rejection for Cause

a. When a Company rejects a Licensed Deck Officer, other than for medical reasons, whom the Company considers unsatisfactory, the Company shall furnish a statement, in writing, to the individual and to the Organization stating the reasons for the rejection and the Organization agrees promptly to furnish a replacement. If the Organization feels any rejection has been unjust, the Organization shall, without delay, take the matter up with the Company and attempt to secure an adjustment. In the absence of a satisfactory adjustment, the matter may be submitted for disposition under the grievance procedures of this Agreement.

b. If a Licensed Deck Officer has been discharged for cause by a Company, he may be dispatched to that Company to fill a vacancy provided that, since the time of such discharge, the Licensed Deck Officer has had two (2) years of satisfactory service as a Licensed Deck Officer, and further provided that the two (2) years of satisfactory service shall not be deemed to have elapsed prior to the Licensed Deck Officer having completed 360 days of shipboard employment. Such two (2) years of satisfactory service shall be presumptive evidence that the Licensed Deck Officer is qualified and satisfactory. This provision shall not apply to a Licensed Deck Officer who has been discharged for the use or possession of narcotics, or for smuggling, or for behavior which would render the vessel unseaworthy.

c. Where the discharge for cause by a Company involved the competency of a Licensed Deck Officer, based on the lack of technical knowledge, and subsequent thereto the Officer has satisfactorily completed the relevant course at the Maritime Institute of Technology and Graduate Studies, the completion of such course shall be evidence the Licensed Deck Officer is qualified and the two-year service period set forth above shall not be a prerequisite for dispatch.

3. Medical Discharge or Medical Rejection

a. A Licensed Deck Officer who is denied employment or is discharged for medical reasons as determined by the Company's medical doctor, and disputes the medical findings, shall immediately notify the Company and the Organization and shall immediately be examined by the Organization's doctor. If the Organization's doctor concurs in the rejection, the discharge or denial of employment shall be deemed proper.

If there is a conflict between the Company doctor and the Organization's doctor, the Licensed Deck Officer shall have recourse, as follows:

Where the Licensed Deck Officer is eligible for examination by the U.S. Public Health Service, the issue as to whether the Licensed Deck Officer is fit for duty or not, shall be submitted to the U.S. Public Health Service, and its decision shall be final. Where the Licensed Deck Officer is not eligible for examination by such Service, the medical service available to the MM&P Plans shall make the final decision as to whether the Licensed Deck Officer is fit for duty. The medical service available to the MM&P Plans shall in no instance be the same as the one who is party to the disputed medical findings.

The examinations shall be limited to those conditions which were set forth as the Company's grounds for medical rejection or discharge.

b. If, under the foregoing provisions, it is determined that the medical rejection was improper, the Licensed Deck Officer shall be assigned to the job. In the event the

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vessel has sailed, the Licensed Deck Officer shall be awarded ten (10) days' wages, including nonwatchstanding allowance where the same is included as part of base pay, subsistence and lodging. Contributions to the several MM&P Plans shall be made by the Company on behalf of the Licensed Deck Officer for the same period. If, under the foregoing provisions, it is determined that the medical discharge was improper, the Licensed Deck Officer shall be reinstated to his job and, retroactive to the time of discharge, shall receive full base wages, including nonwatchstanding allowance where the same is included as part of base pay, contributions to the several MM&P Plans on his behalf, subsistence and lodging. The expense of the examination by the medical service available to the MM&P Plans shall be borne by the Company.

c. No Licensed Deck Officer shall be denied employment who may have a physical defect which has not prevented him from performing his Licensed Deck Officer's duties in the past unless it is proven there is deterioration which has rendered the Licensed Deck Officer unable to properly perform his duties.

4. Reduction in Fleet

The provisions of this Section shall not restrict the right of the Company to terminate a Licensed Deck Officer by reason of curtailment of operations. In the event of such curtailment, the least senior Licensed Deck Officer or Officers, as the case may be, in the permanent employ of the Company, shall be terminated. Notification of such termination shall be provided the Licensed Deck Officer involved and the Organization's office closest to the Company Headquarters in a timely manner.

5. Picket Lines

It is understood that, in the event a picket line is established against any vessel, the Licensed Deck Officers of such vessel will report and perform all of their normal duties incidental to the security of the vessel, passengers, and cargo, provided that no Licensed Deck Officer shall be required to work under conditions which may endanger his health or safety, or be required to either work behind a picket line or cross a picket line. The Organization undertakes to use its best efforts to obtain clearance for such purposes from the Union establishing the picket line. The refusal of a Licensed Deck Officer to perform work in accordance with this provision shall not be cause for discharge or discipline, and shall not be deemed a violation of the no-strike provision of this Contract.

6. Arbitration

If a dispute concerning a discharge for any reason or a refusal to employ, not involving a medical rejection, is resolved by the Arbitrator under Section XXXVI of this Agreement, the Arbitrator shall have authority to reach only one of two decisions. He may either uphold the discharge or rejection if he finds that it was made with just cause, or he may direct the Company to reinstate or employ the Licensed Deck Officer with full base wages, including nonwatchstanding allowance where the same is included as part of base pay, subsistence and lodging for the period he was off the vessel, plus contributions to the several MM&P Plans for the same period.

SECTION IV. INFORMATIONAL REQUIREMENTS

No later than thirty (30) days after the execution of this Agreement, the Company shall furnish to the Organization a statement or statements containing the following information. All lists and data supplied shall be updated promptly whenever there is any change.

1. Company Information

a. The names and title of each officer and director of the Company. If the Company is not a corporation, the names and title of each principal.

b. If a corporation, the State in which the Company is incorporated.

c. The Companies shall designate a representative in each port where the Organization maintains an office, authorized to handle and settle disputes and grievances arising under this Agreement. A list of all such designated Company representatives shall be furnished to the Organization and kept current.

d. The name and location of office of that individual in the Company who is authorized to make policy decisions concerning matters in which the Organization and the Company are jointly concerned.

e. Existence or non-existence of a construction reserve fund under provisions of federal legislation.

2. Vessel Information

a. The names, port of registry, call sign and radiotelephone ringer numbers (if any) of owned vessels.

b. With respect to vessels other than those owned by the Company, the following information shall be furnished for other vessels being operated:

i. Name and owner
ii. Port of registry and call sign
iii. Time and type of charter

SECTION V. VESSELS BOUND BY THE AGREEMENT

1. Coverage of Agreement

a. Vessel Coverage. This Agreement covers the Licensed Deck Officers employed on oceangoing U.S.-flag vessels, owned, operated or bareboat chartered (both at present or at any time during the life of this Agreement) by the Company or any of its subsidiaries or affiliates (whether so at present or at any time during the life of this Agreement) as an owner, agent, operator or bareboat charterer.

b. Subsidiary and Affiliate. The term "subsidiary" or "affiliate" shall be deemed to include any business entity whether corporate, partnership, trust, individual, or otherwise, which is effectively controlled by or effectively controls the Company either directly or indirectly.

c. Requirement of Subsidiary or Affiliate to Execute the Collective Bargaining Agreement. The Organization may in its discretion at any time require that any such subsidiary or affiliate execute this Agreement and a refusal to do so will give the Organization the right, upon a ten (10) day written notice to the Company, to cancel this Agreement. The failure of the Organization to request a subsidiary or affiliate to sign this Agreement shall not in any way affect the obligation of the Company herein that this Agreement does cover and include all the Licensed Deck Officers on all the vessels described above whether owned or operated by the Company or any of its subsidiaries or affiliates.

d. Agency. It is agreed that a Company operating a vessel as an Agent shall give written notice to the Organization of its status as an Agent and shall be liable for the period that the vessel is under its operation including the completion of any pending voyage for wages, vacation, bonuses and all daily contributions to the MM&P Plans required under this Agreement. The Company is obligated to give written notice to the Organization of any termination of its Agency. Failure to do so will keep the Agent bound to the foregoing obligation until such notice is received by the Organization. If the Organization objects, in writing, to its acceptance of the principal for financial reasons, the Company, if it determines thereafter to continue as Agent, undertakes all of the obligations of the principal under the contract.

e. Other Vessels. In the event a tanker Company acquires a vessel other than a tanker vessel, or a dry-cargo Company acquires a tank vessel, such vessel will be covered under an Agreement similar to that between the Organization and Companies whose maritime collective bargaining agreements with other Unions correspond most closely.

2. Sales and Transfers

a. With regard to any sale, charter (but not including a vessel which the Company may be operating under a bareboat charter and the charter is terminated) or any manner of transfer (except sales to foreign flag) of the Company's vessel:

i. At least seventy-two (72) hours prior to the date of the effective transfer of the vessel, written notice must be given to the Organization by the Company.

ii. The execution by the purchaser, charterer or transferee of the Organization's collective bargaining agreement shall be a condition precedent to any sale, charter or transfer.

iii. If the Company violates subsection 2(a) (ii) above, the Arbitrator may include as part of his award, loss of wages and contributions to the various Organization Plans.

iv. A violation of subsection 2(a) (ii) above shall also permit the Organization to cancel the no-strike provisions of this Agreement.

b. Sales to Avoid Payment of Severance Monies. The Company agrees that it will not use the device of a sale to another U.S.-flag Company to circumvent the payment of severance monies due under this Agreement.

3. Foreign Flag Vessels:

DRY CARGO: The Company agrees that with respect to any foreign flag vessel owned or operated by or on bareboat charter to the Company or by or on bareboat charter to any affiliate or subsidiary, on bareboat charter to other Companies not covered herein, the following conditions shall apply:

a. The Organization shall have the same right as it has with respect to the vessels covered by this Agreement and subject to the same conditions, to have its representatives board any foreign flag vessels covered by this Section in any port for the purpose of consulting with the Licensed Deck Officers employed thereon.

b. If the Organization's representative capacity is challenged by the Company, the Arbitrator designated under this Agreement shall decide by whatever method he may prescribe, whether the Organization does in fact represent a majority of the Officers in question.

c. If the Organization is designated by a majority of the Licensed Deck Officers on the vessel or vessels involved to be their collective bargaining representative, the Company shall bargain with the Organization to perfect an agreement applicable to those Officers. In the bargaining, the Organization will recognize the need of maintaining a competitive economic position for the vessel or vessels involved.

In the event the parties do not reach full agreement within four (4) months from the commencement of bargaining, the issues remaining unresolved shall be submitted for resolution by the Arbitrator provided for in this Agreement.

d. The Company agrees to recognize and comply with, subject to requirements of any applicable law, any written authorization executed by its Licensed Deck Officers for the deduction from wages and payment to the Organization of initiation fees, dues and other Organization obligations.

e. The Organization agrees that it will not interfere with the operation of any vessel covered hereby by work stoppage or otherwise, so long as the Company is engaged in good faith collective bargaining with the Organization if it be found to be the Officers' representative.

f. At the time of the execution of this Agreement, each signatory Company shall furnish the Organization a list showing all foreign flag vessels owned or operated, and identifying the owner or operator.

g. The term "foreign flag vessel" shall be limited to such vessels that are engaged in whole or in part in the import or export cargo or passenger trade of the United States.

h. The term "affiliate" or "subsidiary" shall include any business entity whether corporate, partnership, trust or individual which is effectively controlled by or effectively controls the Company herein either directly or indirectly.

*TANKER. **Both parties recognize that the foreign flag question affects their respective interests. The Organization recognizes the Company's desire to maintain its position in foreign tonnage, and the Company recognizes the Organization's interest in protecting its presently outstanding jobs against foreign-owned tonnage and its desire to increase job opportunities in that tonnage.***

Both parties further agree to form a Joint Committee that will meet at a mutually agreeable time and place to discuss the parties' aforesaid respective interests.

4. New Construction and Major Reconversions. For all new construction contracts and for all new conversions where the conversion includes a major rebuilding and alterations of the midships house or the house in which the Licensed Deck Officers are quartered, the following requirements shall apply in addition to any of the former provisions not superseded by the new requirements.

There requirements shall not be applicable to contracts let under the terms of the preceding Agreement; nor shall they be applicable to future construction contracts for vessels of identical design to existing vessels in the Company fleet provided that, if the Company advises the Organization of the existence of such contracts within thirty (30) days of signing such contract, only those requirements negotiated in the former applicable Agreement shall apply.

a. Location of Quarters

i. Licensed Deck Officers' quarters shall be located on a separate deck from unlicensed crew members.

ii. Rooms and offices for cargo checkers and other shoreside personnel related to cargo operations shall be on a deck other than that on which the Licensed Deck Officers' rooms are located.

iii. The Master's stateroom and office shall be located directly under the navigation bridge. In the event that other licensed vessel personnel are quartered on the same deck, they shall be Licensed Deck Officers or Staff Service Personnel.

b. Quarters Requirements. Licensed Deck Officers' quarters shall be air-conditioned, adequately soundproofed, and shall have a private toilet and shower attached. Rooms are to have a minimum of one hundred ten (110) square feet of living space not including the washroom, hall space or bunks. A regular desk and chair, an upholstered high-back chair, and appropriate reading lamp, and a bunk of not less than 42"x78" (48"x78" in the case of the Master) will be the minimum acceptable furniture and shall be equipped with hooking devices.

c. Recreation Rooms. All vessels shall be provided with an adequately soundproofed Officers' Recreation room located on the same deck as the Officers' quarters or the dining room, for the exclusive use of the Officers. The recreation room shall be equipped with a 21" color television, hi-fi or tape systems, telephone, radio, refrigerator, coffee facilities, tables, chairs, lamps and other essential furniture suitable for the number of Officers assigned to the vessel. The Company and the Organization agree to designate a committee for the purpose of establishing standards for Officers' recreation rooms, their furniture and decor. On vessels with split deck house, a recreation room shall be provided in the deck house in which the Licensed Deck Officers are quartered in the same manner and with the same provisions as listed above in this Section.

d. Chief Officer's Office. All vessels shall be provided with an air-conditioned office for the Chief Officer. If the office is located adjacent to his stateroom there shall be provided a separate entrance from the weather deck. Adequate provisions shall be made to properly soundproof the office from all adjacent sleeping spaces. The ship's office shall contain the usual office furniture and equipment, and telephone or other internal communications system, and shall have an independent toilet, shower, and washing facilities. The equipment referred to herein shall include a calculator.

e. Port Relief Officer's Room. A room shall be provided for the exclusive use of Port Relief Officers while in American ports. The Relief Officer's room shall be equal in all respects to the quarters provided for the ship's Officers and shall be located in the area of the Deck Officers' quarters.

f. Laundry Facilities. All vessels shall be provided with a laundry for the exclusive use of the Licensed Officers of the ship and it shall be located on the same deck as the Officers' quarters. It shall be connected to the ship's A. C. system and shall be made soundproof as necessary to avoid disturbance to adjacent personnel. The laundry shall be equipped with an automatic electric washer and dryer, tubs, ironing board and steam iron. Equipment shall be properly maintained in good working order and adequate spares to keep equipment operating shall be carried as normal vessel spares. When any equipment cannot be repaired at sea, it shall be repaired in the first port where facilities are available and time permits. On vessels with split deck houses, a laundry shall be provided in the deck house in which the Licensed Deck Officers are quartered in the same manner and with the same provisions as listed above in this section.

g. Officers' Dining Saloon. The Officers' Dining Saloon shall be properly appointed with sufficient dining space so as to insure each officer shall have an assigned place setting and there are sufficient additional place settings as may be determined by the Company to insure service to passengers (if carried) or other shore personnel who are entitled to be fed in the Saloon. A telephone or other internal communications system shall be provided.

h. Navigating Bridge and Chart Room.

i. To minimize noise levels on the bridge, the Radio Room shall not be designed as an area opening directly onto the Navigation Bridge or Chart Room.

ii. Suitable toilet and washing facilities and a cold water drinking fountain shall be located on the bridge.

iii. Each navigating Bridge shall be equipped with a Master's Sea Cabin for use during extended periods of duty on the Bridge during sea passages.

i. DRY CARGO: Checkers' Room and Stevedore Toilets. Vessels to be constructed for use in foreign trade shall have adequate checkers' rooms and stevedore toilet facilities designed so as to eliminate the problem of unauthorized shore personnel using facilities reserved for the ship's complement.

i. TANKER: Shoreside Workers' Rooms and Toilets. Vessels to be constructed shall have adequate spare rooms and toilet facilities designed so as to eliminate the problem of unauthorized shore personnel using facilities reserved for the ship's complement.

j. DRY CARGO: Information Required: With respect to all new construction and major reconversion, an entire set of blueprints must be submitted to the Organization for its study and approval. The Organization shall be provided with complete information on the following items.

j. TANKER: Information Required: With respect to all new construction and major reconversion, relevant blueprints requested by the Organization for its study and comments shall be provided regarding:

ITEMS: (Both Dry Cargo and Tanker)

i. Vessel's characteristics

ii. Type of power plant, shaft horsepower, extra power plants, auxiliary equipment, evaporator and reefer capacity;

iii. Cargo handling facilities and equipment, gan-

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tries, cranes, conveyors, kingposts, booms, winches, dehumidification equipment and reefer equipment;

iv. Ballasting and stability control equipment;

v. Bridge equipment, navigational equipment, communication equipment, vessel control equipment, bow thrusters, ground tackle and mooring arrangements;

vi. Cargo hold or cell layout for breakbulk, containers, automobiles and refrigerated cargo;

vii. Cargo deep tanks, butterworthing systems including loading and discharging equipment;

viii. Advanced apparatus perceived for future installment on the vessel, and

ix. Proposed manning by Departments including tentative quarters' arrangements and proposed layouts of rooms, dining saloon and recreation room.

k. Parties have agreed that the Company will provide the data contained in (j) above prior to discussing the manning scale with the Organization.

5. Vessels In and Out of Commission

a. Vessels in Commission

i. A dry cargo or tank vessel shall be considered in commission at all times when cargo activity is involved or when it is receiving power from its own plant. A tank vessel shall also be considered in commission while there is cargo on board, or when it has not been issued a gas-free certificate.

ii. After a Company accepts delivery of a vessel and the vessel is still in the shipyard or if it is in the shipyard for any reason whatever thereafter, a full complement of Licensed Deck Officers shall be employed any time the vessel uses power from its own plant, or when work is performed relating to the duties or jurisdiction of the Licensed Deck Officers.

iii. A full complement of Licensed Deck Officers shall be employed at all times when a vessel is in commission.

iv. No Licensed Deck Officers shall be laid off without pay over a Saturday, Sunday, or holiday.

b. Vessels Out of Commission

When a vessel is out of commission, and Licensed Deck Officers are employed, the following shall prevail:

i. If only one (1) Licensed Deck Officer is employed, he shall receive the same compensation as that of Master of the vessel.

ii. If an additional Licensed Deck Officer is employed, he shall receive the same rate of pay and overtime as that of the Chief Officer of the vessel.

iii. Any other Licensed Deck Officers employed shall receive the same rate of pay and overtime as that prescribed in this Agreement for the rating and capacity in which he is acting for the period in which he is employed on the vessel.

iv. When a vessel is out of commission, a minimum of one (1) Organization Licensed Deck Officer covered by this Agreement shall also be employed in the event that (1) any licensed or unlicensed person under a seagoing collective bargaining agreement is employed by the Company to work on the vessel, irrespective of the capacity in which he is employed; or (2) any licensed or unlicensed person under any collective bargaining agreement is employed by the Company to do work falling within the jurisdiction of the Licensed Deck Officers. (This requirement is not intended to change past practices regarding unlicensed PMA shore gangs.)

If such work is (a) annual inspection or (b) testing or inspection of cargo gear by an accredited Surveyor, or (c) the volume of work becomes excessive for the one Organization Licensed Deck Officer, one (1) additional Licensed Deck Officer shall be employed to supervise.

When a vessel is shifted under a dead tow, a minimum of three (3) Licensed Deck Officers shall be employed, *(except on tank ships being shifted within the confines of a shipyard under shipyard control)*.

v. When a vessel other than a tanker is out of commission with cargo on board, and a Licensed Deck Officer other than the Master is employed, Port Relief Officers, as provided for under this Agreement, shall be employed.

SECTION VI. CLASSIFICATION OF VESSELS

Vessels shall continue to be classed by "power tonnage" for the life of this Agreement.

1. Power Tonnage Definition. Power tonnage is the arithmetic sum of a vessel's horsepower plus the gross tonnage.

2. Source of Information. During the life of this Agreement, in determining the class of vessel, horsepower shall be taken from the current Record of the American Bureau of Shipping and admeasurement of tonnage as determined by the current U. S. Coast Guard Admeasurement Standards.

3. Dual Tonnage. If a vessel carries a "dual tonnage" certificate issued under the 1966 Convention, the higher gross tonnage shall apply.

4. Decrease in Class. Once the power tonnage of a vessel has been determined, no subsequent conversion or changes in admeasurement for any reason may result in a decrease in class for said vessel.

5. Classifications. Vessels shall be classed for the purpose of this Agreement as follows:

a. Dry Cargo and Passenger Vessels:

Class	SINGLE SCREW POWER TONNAGE	TWIN SCREW POWER TONNAGE
A-4	70,001 to 100,000*	51,001 to 75,000*
A-3	45,001 to 70,000	35,001 to 51,000
A-2	35,001 to 45,000	28,001 to 35,000
A-1	25,001 to 35,000	20,001 to 28,000
A	17,001 to 25,000	15,001 to 20,000
B	12,001 to 17,000	9,001 to 15,000
C	7,501 to 12,000	5,501 to 9,000
D	5,001 to 7,500	3,501 to 5,500
E	Less than 5,001	Less than 3,501

***The classification of single screw vessels in excess of 100,000 power tonnage and twin screw vessels in excess of 75,000 power tonnage shall be the subject of negotiations between the parties.**

EXHIBIT "A"

b. *Tank Vessels:*

Class	*Power Tonnage*
A-1	*Above 38,000**
A	*25,001 to 38,000*
B	*12,001 to 25,000*
C	*Less than 12,000*

The classification of vessels in excess of 38,000 power tons shall be the subject of negotiations between the parties.

6. **"LBD" Information.** Within two (2) months after signing this Agreement, each Company shall furnish the Organization with the following information for each of its vessels and such information shall be kept up to date:

Length, Breadth and Depth (LBD) of each vessel as defined by the Intergovernmental Maritime Consultative Organization (IMCO) Treaty which defines the new admeasurement of a vessel's gross tonnage. The Organization agrees that should ratification of the Convention be implemented during the life of this Agreement, any changes in tonnage shall not change the wage scales in effect at that time.

SECTION VIII. WAGES AND EARNINGS

1. **Specified Wages.** Officers of the rank classifications hereby designated (or equivalent rank qualifications, regardless of what titles may be used by the respective Company), shall be paid the monthly wages, non-watchstanding allowance and overtime rates incorporated in this Agreement as Schedule "A" together with subsistence, quarters, maintenance and cure, as customary.

The minimum, or starting monthly wage for all officers, on mechanized, semi-mechanized, retrofit and diesel vessels shall be ten (10%) percent higher than on conventional vessels of the same class, provided that the wage rate of the Master shall never be less than twenty-five ($25.00) dollars in excess of any other member of the crew. For the purposes of this Agreement, all mechanized, semi-mechanized, retrofit and diesel vessels shall be considered to be not less than Class C for wage purposes.

2. **Commencement of Wages.** Wages shall commence the day of dispatch by the Organization as requested by the Company, provided that he reports as ordered on the date specified by the Company and is not rejected for just cause. In no case shall the Officer be required to report to a medical examiner, a Company office, vessel, or any other place designated by the Company prior to his commencement date on the payroll. (The wage and dispatch procedures under the 1969-1972 Agreement shall continue to be applied under this paragraph for PMA vessels).

3. **Reduction of Wage Prohibition.** No Officer who receives a monthly wage rate higher than prescribed shall suffer a reduction in his monthly wage, provided that said Officer remains in the same position with the same Company on a vessel in the same class.

4. **Length of Service Increases.** In any instance where an established length of service wage increase arrangement is in effect, increases above the rate specified in Schedule "A" may be paid in accordance with the provisions of such arrangement.

5. **Non-watchstanding Allowance and Equivalent.** Each non-watchstanding Licensed Deck Officer whose normal hours of duty at sea are forty (40) hours per week and each Master and Staff Captain, if carried, shall receive a sum designated as non-watchstanding allowance in addition to their monthly wage.

Non-watchstanding allowance is computed by dividing the monthly base wage by twenty-one and two-thirds (21-2/3) and multiplying the result by six point zero six seven (6.067). This same formula shall be used to determine the non-watchstanding equivalent for watchstanding Officers.

The non-watchstanding allowance or equivalent shall be added to the monthly base wage of the Officer for the purpose of computing vacation benefits, bonuses and unearned wages.

6. **Base Hourly Wage.** The base hourly wage for Licensed Deck Officers shall be computed by dividing the base monthly wage (excluding non-watch allowance or equivalent) by one hundred and seventy-three point three (173.3).

The figure is derived by multiplying fifty-two (52), [the number of weeks in a year], by forty (40) [five (5) days per week times eight (8) hours per day], and dividing the results by twelve (12), [number of months in a year].

7. **Division of Wages.** When a vessel is in commission with less than the manning scale required under this Agreement, for the period of time the vacancy is not filled in accordance with the prescribed hiring procedures, regardless of the reason, the following shall apply:

a. Any non-watchstanding Licensed Deck Officer required to stand watches will continue to receive his non-watchstanding allowance; he will be paid his overtime, premium time or penalty rate on the same basis as any watchstander.

b. In the event of the promotion of a watchstanding Licensed Deck Officer to a non-watchstanding vacancy, the Officer promoted shall receive the wages, non-watchstanding allowance, and contributions on his behalf shall be made to the several MM&P Plans at his new rate. Overtime for work performed shall be paid in accordance with Section XI.

c. The wages for the missing Licensed Deck Officers shall be paid to an MM&P Special Pension or Welfare Fund.

8. **Legal Appearances.** In the event a Licensed Deck Officer appears at the request of the Company in any matter involving taking of depositions, pre-trial hearings, testimony as an expert witness or trial witness, or testimony before civic committees, he shall receive wages and reasonable living and travel expenses. Contributions to the MM&P Plans shall be made in his behalf and these days shall be considered covered days of employment.

9. **Cash Advance.** A Licensed Deck Officer requesting a draw in a foreign port shall be entitled to the same either in cash in U. S. money or in travelers' checks, except where prohibited by local law. He shall be entitled to one-half of his net earnings after all deductions. Draws shall be issued no later than twenty-four (24) hours prior to arrival.

EXHIBIT "A"

10. Reporting of Earnings. When permitted by law and the appropriate mechanisms can be worked out, earnings shall be reported on the Officer's W-2 Form so income may be credited in the calendar year earned.

Whenever possible, payrolls shall be terminated and the Licensed Deck Officers paid on the 31st of December. If at sea on foreign articles, and the appropriate mechanisms referred to above have not yet been worked out, the maximum allotment and the cash and slops advances permitted by law shall be afforded on request, and a separate notation made on the Officer's pay voucher specifying the amounts actually received by the 31st of December.

11. Tax Deductions. Deductions for F.I.C.A., Federal Income Taxes, and State payroll or disability taxes shall not exceed the amounts specified by law. Federal income taxes shall be withheld as either a percentage of earnings or on the basis of the Officer's declared legal dependents as specified by his signed W-4 form.

12. Monies Due. All unclaimed monies at time of payoff and all monies due an Officer after payoff resulting from resolved disputes shall be sent directly to the Licensed Deck Officer by the Company with a copy of the letter of transmittal and a copy of the voucher which shall indicate the reason for payment sent to the appropriate office of the Organization.

The Company will furnish the Headquarters Office of the Organization, quarterly, no less than six (6) copies of the list setting forth name of the Licensed Deck Officers and the sums of monies due that have not been paid in accordance with the foregoing.

(SCHEDULE "A")
WAGE RATES FOR DRY CARGO/PASSENGER VESSELS
Effective June 16, 1972

	Base Wage	Hourly Rate	Nonwatch
CLASS A-4			
Master	$2,835.90	$24.55	$793.97
Staff Captain	2,020.78	17.49	565.87
1st Officer	1,550.20	13.43	434.09
2nd Officer	1,310.69	11.34	366.99
3rd Officer	1,071.18	9.27	299.95
CLASS A-3			
Master	2,596.65	22.48	726.99
Staff Captain	1,865.97	16.16	522.49
1st Officer	1,384.38	11.99	387.62
2nd Officer	1,206.29	10.44	337.75
3rd Officer	1,028.19	8.90	287.88
CLASS A-2			
Master	2,443.37	21.15	648.07
1st Officer	1,251.19	10.83	350.37
2nd Officer	1,129.56	9.78	316.27
3rd Officer	1,007.91	8.73	282.24
CLASS A-1			
Master	2,295.70	19.87	642.73
1st Officer	1,210.31	10.47	338.90
2nd Officer	1,098.92	9.51	307.72
3rd Officer	987.54	8.55	276.53
CLASS A			
Master	2,147.80	18.59	601.32
1st Officer	1,165.89	10.10	326.47
2nd Officer	1,056.33	9.15	295.77
3rd Officer	946.77	8.19	265.13
CLASS B			
Master	2,053.30	17.77	574.87
1st Officer	1,115.44	9.66	312.33
2nd Officer	1,012.23	8.76	283.45
3rd Officer	909.01	7.88	254.51
CLASS C			
Master	1,957.31	16.94	547.99
1st Officer	1,074.71	9.30	300.92
2nd Officer	971.49	8.42	272.04
3rd Officer	868.27	7.52	243.10
CLASS D			
Master	1,957.31	16.94	547.99
1st Officer	1,054.40	9.12	295.22
2nd Officer	951.16	8.24	266.34
3rd Officer	847.92	7.34	237.40
CLASS E			
Master	1,957.31	16.94	547.99
1st Officer	1,034.00	8.96	289.52
2nd Officer	930.81	8.06	260.64
3rd Officer	827.61	7.17	231.76

WAGE RATES FOR MECHANIZED, SEMI-MECHANIZED, DIESEL AND RETROFIT VSSSELS
Effective June 16, 1972

	Base Wage	Hourly Rate	Nonwatch
CLASS A-4			
Master	$3,119.50	$27.00	$873.37
Staff Captain	2,222.86	19.25	622.41
1st Officer	1,705.22	14.76	477.47
2nd Officer	1,441.76	12.48	403.70
3rd Officer	1,178.31	10.20	329.92
CLASS A-3			
Master	2,856.32	24.72	799.69
Staff Captain	2,052.57	17.76	574.73
1st Officer	1,522.82	13.19	426.39
2nd Officer	1,326.92	11.49	371.54
3rd Officer	1,131.01	9.80	316.70
CLASS A-2			
Master	2,674.99	23.15	748.92
1st Officer	1,376.31	11.91	385.38
2nd Officer	1,242.51	10.76	347.94
3rd Officer	1,108.71	9.60	310.45
CLASS A-1			
Master	2,525.27	21.86	707.01
1st Officer	1,331.34	11.52	372.82
2nd Officer	1,208.81	10.47	338.48
3rd Officer	1,086.29	9.41	304.20
CLASS A			
Master	$2,362.58	$20.45	$661.46
1st Officer	1,282.47	11.10	359.11
2nd Officer	1,161.96	10.05	325.37
3rd Officer	1,041.45	9.02	291.64

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CLASS B			
Master	2,258.68	19.55	632.36
1st Officer	1,226.98	10.62	343.57
2nd Officer	1,113.45	9.63	311.78
3rd Officer	999.92	8.66	279.99
CLASS C			
Master	2,153.04	18.64	602.79
1st Officer	1,182.19	10.23	331.02
2nd Officer	1,068.64	9.26	299.22
3rd Officer	955.09	8.27	267.43
CLASS D			
Master	2,153.04	18.64	602.79
1st Officer	1,159.84	10.04	324.77
2nd Officer	1,046.27	9.06	292.98
3rd Officer	932.70	8.07	261.18
CLASS E			
Master	2,153.04	18.64	602.79
1st Officer	1,137.40	9.84	318.46
2nd Officer	1,023.89	8.87	286.73
3rd Officer	910.37	7.88	254.94

Port Relief Officer Hourly Rates*

Dry Cargo and Passenger Vessels	$8.17
Mechanized, Semi-Mechanized, Retrofit and Diesel	$8.99

* Also Rate paid for Travel Time as specified in various Port travel memoranda.

TANKER VESSELS

Power Tonnage	Base Wage	Hourly Rate	Nonwatch
Class A-1—*38,001 and over			

*Section VI, Subsection 5. "The classification of vessels in exces of 38,000 power tons shall be the subject of negotiations between the parties."

Power Tonnage	Base Wage	Hourly Rate	Nonwatch
Class A—25,001 to 38,000			
Master	$2,079.73	$18.00	$582.34
Chief Officer	1,314.91	11.39	368.21
Second Officer	1,162.76	10.07	325.62
Third Officer	1,010.60	8.75	282.96
Class B—12,001 to 25,000			
Master	$1,896.16	$16.41	$530.94
Chief Officer	1,226.39	10.62	343.39
Second Officer	1,090.32	9.44	305.29
Third Officer	954.23	8.27	267.19
Class C—12,000 and Under			
Master	$1,865.19	$16.14	$522.27
Chief Officer	1,195.49	10.35	334.78
Second Officer	1,060.65	9.18	296.93
Third Officer	925.79	8.01	259.24

Port Relief Officer

Hourly Rate	$9.20
Minimum	$64.40

SECTION IX. SIGN-ON AND PAYOFF PROCEDURES

The Parties agree to provide a standard sign-on and payoff procedure that will provide the following:

1. Sign-Ons and Payoffs. All sign-ons and payoffs of voyage articles or payrolls shall be scheduled, insofar as practical, on a working day between the hours of 0800 and 1700.

a. An Officer required to report on his scheduled day off, will be deemed to have not been granted the day off.

b. An Officer called out or called back on a weekend or holiday for the sole purpose of signing on or paying off, shall be paid premium time for such reporting, except on vessels where sign-on or payoff cannot be practically accomplished at some other time.

c. An Officer called out or called back to assist the Shipping Commissioner, the Company Labor Relations representatives or Paymaster in the sign-on or payoff procedure during normal off-duty hours will be compensated at his overtime rate in lieu of the premium rate previously described.

d. Sign-on or payoff of Licensed Deck Officers shall not be delayed by disputes involving the Company and any other Union not representing them for collective bargaining purposes. Off-duty Officers shall be compensated for violations of this provision by the payment of premium rate if not being otherwise compensated.

e. In the event a vessel signs on articles near the end of a 31-day month and the vessel is not scheduled to sail prior to the first day of the next month, the payroll for the new voyage shall be broken into two parts. The first part shall reflect and give full credit for each remaining day of the 31-day month. The second part would reflect the rest of the voyage beginning with the first day of the following month and terminating on the day of arrival or subsequent day at the final port of payoff. The two part payroll shall be paid off on a single voucher.

f. The settling of grievances at the payoff shall not be the responsibility of the Master or the Licensed Deck Officers. *(TANKERS—This shall not preclude the Master or other Licensed Deck Officer from stating the facts of the matter either verbally or in writing and his participation shall be limited to that extent.)*

g. *TANKERS. Notwithstanding any other specific prohibition against clerical work, when payoffs or sign-ons are unable to be accomplished by a Staff Officer, by shoreside personnel provided by the Company or as described in Section XI, subsection 11, the Master shall perform this duty and shall be compensated at the rate of $12.50 per hour which shall be in addition to any other compensation payable.*

2. Payoff on Termination of Employment

a. Dismissal or Termination of Employment. When a Licensed Deck Officer is dismissed or his employment is terminated, all monies due shall be paid in the following manner:

i. On vessels arriving on or before 1200, he shall be paid prior to 1700 that day. Non-negotiable instruments or Company check shall be furnished if he is not paid prior to 1400.

ii. On vessels arriving after 1200, he shall be paid not later than 1200 of the following day.

b. **Voluntary Termination of Employment.** A Licensed Deck Officer requesting of the Master or Senior Deck Officer in charge that he be terminated shall be paid all monies due in the following manner:

i. On other than day of departure, when not on foreign articles, Officers requesting termination prior to 1400 shall be paid off that day. If such prompt notification is not given, he shall be paid no later than 1200 of the following day. On days of departure, Officers requesting termination at least three (3) hours prior to scheduled sailing time, shall be paid off that day. If such three-hour notice is not given, present practice shall prevail.

c. **Delayed Payoff.** If a payoff scheduled for the day preceding a holiday or weekend is not completed by 1400 or 1700 when non-negotiable instruments are being furnished, or in the case of Officers being dismissed, resigning or otherwise having their employment terminated, has not been completed within the time limits specified in (a) or (b) above, or in the event of discharge if proper notice has not been given in accordance with Section XII-1, then the Officer shall not be required to accept payoff if tendered after the times specified, but instead, may request the payoff be made on the following work day with continuous wages and board and lodging unless furnished by the Company through and including the day of payoff.

3. **Statement of Account.** Prior to payoff, the Company shall give the Officer a statement specifying the number of days (including bonus days, if any), allotments paid, and slop chest and cash advances, covered by the payoff; and the number of overtime, premium and penalty hours to be paid immediately. At the time of payoff, if the Company disputes any claim for wages, overtime, or other payment required under the Agreement, it shall furnish a statement showing the payments disallowed and the reason for disallowance. A copy of this statement shall be given to the Licensed Deck Officer and a copy shall be provided to the Organization's office which has jurisdiction over the port.

Failure to furnish such written statement or the furnishing of a statement which fails to set forth the facts shall presumptively establish that the claim is valid.

4. **Pay Voucher Requirements.** All pay vouchers or envelopes for the regular Licensed Deck Officers and all pay vouchers for Port Relief Officers must be legible and contain the ship's name, the Company's name, voyage number, and dates of payroll period.

5. **Optional Payment by Check.** Licensed Deck Officers shall have the option of requesting, no later than forty-eight (48) hours prior to arrival at port of payoff, that a specific dollar sum of his net wages due shall be paid. *(TANKERS ONLY—at the Company's option by non-negotiable instrument or)* by Company check, provided however, that he shall not be permitted to ask for an amount in excess of ninety (90%) percent of his net wages due.

6. **Master's Account.** The Master shall be paid all monies due at the time of crew payoff. All earnings shall be payrolled and the Master's accounts shall be settled at this time.

7. **Claims Subsequent to Payoff.** Except when prevented by a cause beyond his control, all claims presented subsequent to the payoff must be made by the Officer or his authorized representative within fifteen (15) days after payoff, and are to be presented in writing with a copy to the Organization. In the event the Company does not respond to such claim in writing within fifteen (15) days after receipt, the claim will be presumed to be on the Licensed Personnel Board agenda, unless withdrawn by the Licensed Deck Officer or the Organization.

SECTION X. SHIPPING ARTICLES

1. **Clerical Work.** All clerical work connected with the opening and termination of Articles shall be performed by the Staff Officer or by shoreside personnel provided by the Company. When, under extraordinary circumstances, shoreside personnel are not provided, or when Staff Officers are not carried, the Master or the Licensed Deck Officer he assigns, may be required to perform this work.

2. **Pay-Off Under Articles.** A Licensed Deck Officer on Intercoastal or Coastwise Articles shall be paid off on request, and when on foreign articles in a U. S. port shall be paid off upon request provided a replacement is available in accordance with Section II of this Agreement and he shall not be entitled to transportation.

3. **Scope of Articles.** Articles shall contain an appropriate notation to the effect that the provisions of this Agreement shall be, and be deemed to be, incorporated in and part of the voyage Articles.

4. **Limitation of Time.** Licensed Deck Officers shall not be required to sign articles for a period of more than one hundred and eighty (180) days without the prior consent of the Organization.

5. **One-Way Articles.** Articles for an intended one-way voyage of a vessel shall be subject to special negotiations. The provisions of any such one-way articles executed with any Company signatory to this Agreement, may be referred to as a guide for such special negotations. If the parties fail to reach agreement, the Arbitrator shall determine the Articles and the appropriate provisions of such articles.

SECTION XI. ADDITIONAL COMPENSATION

For all time that Licensed Deck Officers, excluding the Master, are required to be available for duty — at sea and for all time that all Licensed Deck Officers are required to be available for duty in port in excess of eight (8) hours in any one day, or in excess of forty (40) hours in one week (any hours in excess of eight (8) hours in one day for which wage-related overtime is paid shall not be included in such computation) or on Saturdays, Sundays or holidays, wage-related overtime shall be paid. *(This shall also be applicable to tankers except as otherwise provided in this Agreement.)*

1. **Rates of Additional Compensation.** The rates payable for additional compensation when required by this

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Agreement shall be as follows:

a. Overtime: The overtime rate shall be one and one-half (1½) times the Officer's base hourly wage as derived from the formula described in Section VIII.

b. Premium: The premium time rate is four dollars twenty-three ($4.23) cents per hour.

c. Penalty: The penalty rate is six ($6.00) dollars per hour.

2. Application of Rates

a. Not less than one (1) hour's overtime, premium time, or penalty rate shall be paid for any such work performed.

b. Overtime, premium time or penalty rate worked in excess of one (1) hour shall be paid for to the next hour period following.

c. Time shall commence when called to perform such work provided the Officer reports within the half-hour specified, otherwise time shall commence when he reports.

d. If the interval of time between two periods of overtime, two periods of premium time or two periods of penalty rate work is less than two hours, continuous overtime, premium time or penalty rate shall be paid.

3. Minimum Call Out. A Licensed Deck Officer off duty called out or called back in port for any reason other than shifting or hauling, shall be paid a minimum of two (2) hours' additional compensation. He shall be paid four (4) hours, if the call out or call back is on a Saturday, Sunday or holiday. Minimum call out provisions at sea shall remain the same. Call out minimums will not apply to undocking at time of departure for sea.

4. Ordering Work

a. When overtime, premium time, or penalty rate work is to be performed by Deck Department personnel, it shall be ordered by the Department Head (Chief Officer) or the Senior Licensed Deck Officer on duty, under the authority of the Master. A recap of all overtime or penalty rate work performed shall be submitted weekly on a form to be provided by the Company to the Department Head or to the Master in the event the work was performed by the Department Head, to be checked and returned to the Licensed Deck Officer in a timely manner. Any items in dispute shall be noted with the reason for disputing at the time the sheets are returned to the Licensed Deck Officer.

5. When Payable

a. At Sea—Overtime. Licensed Deck Officers (except the Master) shall receive overtime at sea for all watches stood and for all work performed:

i. Off watch or outside of their regularly scheduled duty hours, Monday through Friday inclusive, or

ii. On Saturdays, Sundays, and holidays, or

iii. In excess of the first regularly assigned eight (8) hours' duty.

iv. If otherwise specified in this Agreement.

b. In Port — Overtime. Licensed Deck Officers shall receive overtime in port for all time they are required to remain aboard available for duty and for all watches stood or work performed:

i. Off watch or outside of their regularly scheduled duty hours, Monday through Friday, inclusive, or

ii. In excess of the first regularly assigned eight (8) hours' duty except as otherwise provided in this Agreement, or

iii. On Saturdays, Sundays, and holidays, or

iv. Between the hours of 1700 and 0800, Monday through Friday, inclusive, in non-foreign ports.

v. If otherwise specified in this Agreement.

c. Premim Time — At Sea. On dry cargo ships and only those tank ships engaged in the grain or dry bulk trade, premium time shall be payable at sea from Monday through Friday inclusive for:

i. Regular watches stood by watchstanding Officers in excess of the first eight (8) hours' work, including periods of overtime, but excluding supper relief.

ii. Work performed during regularly assigned hours of duty by nonwatchstanding Officers (excluding the Master) in excess of the first eight (8) hours' work, including periods of overtime.

iii. Mooring or unmooring or transitting locks during periods of tying up and letting go on watch.

d. Premium Time—In Port. Premium time shall be payable from Monday through Friday inclusive, in Port, for:

i. Routine night watches in foreign ports from 1700 to 0800.

ii. Dry Cargo Only—Work performed in excess of the first eight (8) hours worked in one day, including periods of overtime from midnight to midnight in U.S. ports where Port Relief Officers are available.

e. Premium Time—Other Applications. Premium time shall be payable at any time an Officer:

i. Is required to work in lieu of his required rest period or is not permitted an unbroken meal hour as they are described in Section XIX, and such payment shall be in addition to any other compensation payable, except on tankers as otherwise provided in this Agreement.

ii. Is confined to the vessel under conditions described in Section XV.

iii. Standing a sea watch on the bridge is relieved to perform duties not immediately connected with the vessel's navigation such as reading temperatures, acting as a messenger, searching for stowaways or contraband, etc. This shall apply from the time "standby" is rung on the telegraph until "Finished with Engines" is rung. This payment of premium time shall be in addition to any other compensation payable.

iv. Is entitled to a premium payment under the delayed sailing provisions of Section XIII.

v. Is due additional compensation at the premium time rate as may be specified elsewhere in this Agreement.

f. Penalty Rate. The penalty rate shall be applicable as specified elsewhere in this Agreement.

6. Drills. When lifeboat or other drills are held in port or at sea on Saturdays, Sundays or holidays, overtime shall be paid for such drills except where required by law on days of departure and held within the time specified by law.

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7. Work on Watch Below. Authorized work the Licensed Deck Officers routinely and traditionally do during off-watch hours (for example, navigational problems, making weather maps, chart correction and filing, gyro compass maintenance, winding of clocks, clerical work, handling the Company slop chest, safety or cargo conferences, medical duties, and so on) shall be paid for at the overtime rate when performed during overtime hours.

8. Relieving for Meals. Supper relief when stood by a watchstanding Officer shall be paid for at the overtime rate.

9. Medical Duties. When a Licensed Deck Officer is assigned to act as Medical Officer and maintain the Medical Log, he shall receive additional compensation in the form of two (2) hours' overtime for each week or portion thereof that he so serves. Work performed of a medical nature during off-duty hours shall be paid for at the overtime rate and shall be supported by entries in the Medical Log which shall indicate dates and times of services. (Past Company practice to be continued on tankers.)

10. Slop Chest Duties. Licensed Deck Officers may be required to supervise the loading of slop chest stores and to check same aboard during regular duty hours without the payment of additional compensation, but they shall not prepare starting or terminating inventories, nor shall they sell slop chest items to crew members on behalf of the Company without the payment of overtime during off-duty hours. If required to perform these duties during regular duty hours, they shall receive the premium rate described in this Section.

11. Clerical Work. When a Purser is not carried, the Master shall not do clerical work except for work required in his executive capacity, such as:

a. official logbooks
b. reports required by law
c. voyage letters
d. any confidential reports

TANKERS: All clerical work not specifically required for the administration of a particular department other than the deck department shall be performed by a Licensed Deck Officer designated by the Master, if a qualified Licensed Deck Officer is reasonably available. It is the intent such clerical work shall be performed during regular duty hours and the premium rate described in this section shall be payable. In the event that clerical work such as relates directly to the Master's financial responsibility is unable to be assigned to another Officer, the Master may be required to perform the necessary work and shall be compensated at the rate of $12.50 per hour regardless of when performed and shall be in addition to any other compensation payable under this Agreement.

12. Waiving of Overtime. At the commencement of a voyage or at the commencement of a pay period, a Licensed Deck Officer who is part of the complement of a vessel shall have the option to waive overtime payments during said voyage or pay period and, in lieu thereof, accrue additional days of vacation. Such days of vacation shall correspond to the amount which he would have earned as overtime, divided by the daily vacation benefit of the Employee, plus the Company's daily pension contribution for said vacation day. Said additional vacation shall be taken by the Employee immediately following a vacation period.

The Parties shall meet to establish procedures for the implementation of this provision, and the circumstances under which it can be exercised.

13. Prohibition Against Duplication or Pyramiding. Duplication or pyramiding of overtime, premium time or penalty rate payments shall not be permitted except as may be specifically provided for elsewhere in this Agreement.

14. Master's Additional Vacation and/or Compensation. The parties reaffirm that, in accordance with the customs and traditions of the sea, the command responsibility of the Master shall not be limited in any way through the application of the concept of normal hours of duty while at sea. However, the principle of the eight (8) hour day in port shall apply to the Master and his normal hours of duty shall be between the hours of 0800 and 1700, Monday through Friday, inclusive.

If the Master is required to be available for duty in any port on Saturdays, Sundays or holidays or between the hours of 1700 and 0800 on Monday through Friday, inclusive, he shall receive compensation in cash at the rate prescribed in subsection 1 (a) only for any time in excess of forty (40) hours for such duty. Said forty (40) hours' base shall be calculated on a pro rata basis for each thirty (30) day period of covered employment and the pro rata shall apply only when the Master is leaving the vessel for a leave of absence or termination of employment.

For each eight (8) hours earned in accordance with the above paragraph, the Master shall have the option to accrue one (1) extra day of vacation, which shall be a covered day of employment. If the Master elects to receive the compensation in cash, payment shall be made through the Vacation Plan when he submits the appropriate vouchers.

SECTION XII. HOURS OF LABOR AT SEA AND IN PORT

At Sea—All Vessels

1. Watchstanding Officers. Four (4) consecutive hours shall constitute a watch for Licensed Deck Officers. Two (2) such watches shall constitute a day's work.

2. Day Working Officers. The normal hours of duty for day working Licensed Deck Officers shall be between 0800 and 1200 and 1300 to 1700, Monday to Friday, inclusive.

3. No Variation of Sea Watches. On day of departure, after sea watches are set, there shall be no variation of the traditional standing of sea watches of four (4) hours on and eight (8) hours off.

4. Supper Relief

a. On ships manned by three (3) watchstanding Licensed Deck Officers, the Second Officer and Third Officer will alternate relieving for supper.

b. On ships manned by four (4) or more watchstanding Licensed Deck Officers, the two Third Officers will

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alternate relieving for supper. On all passenger vessels, the present practice for relieving for supper shall be continued.

5. Watch Assignments. The purpose of this Section is to give security and status to the Licensed Deck Officer. Only if mutually agreeable to the Licensed Deck Officer concerned, may the following schedule be varied; except that under circumstances of illness or incapacity the Master may temporarily shift the watches.

a. On ships manned by three watchstanding Licensed Deck Officers, or on tankers manned with a watchstanding Chief Officer in lieu of one of the two required Third Officers:

- i. Third Officer shall stand 8-12 watch
- ii. Second Officer shall stand 12-4 watch
- iii. Chief Officer shall stand 4-8 watch

b. On ships manned by four or more Licensed Deck Officers (excluding Master):

- i. Third Officer shall stand 8-12 watch
- ii. Third Officer shall stand 12-4 watch
- iii. Second Officer shall stand 4-8 watch.

c. With respect to the choice of watches between the two Third Officers, preference shall be given to the Third Officer with seniority on the vessel.

d. When a vessel, other than passenger vessels, does sail shorthanded, the Chief Officer, who is normally a non-watchstander, must stand the 4 to 8 sea watch.

i. This subsection shall not apply to the Alaska Trade in those Companies where customs has been to the contrary.

In Port—Dry Cargo and Passenger Vessels

1. Normal Port Hours. The normal hours of labor while a vessel is on port time for day working Licensed Deck Officers shall be between 0800 to 1200 and 1300 to 1700, Monday through Friday, excluding holidays.

2. Avoidance of Split Shift. On arrival day, a watchstanding officer who has worked at any time between midnight and 0800 (including periods of overtime), but who has not completed his eight hour day, shall, if he wishes, be assigned to complete his work day commencing at 0800. But in a foreign port, no such assignment shall be required of the Officer who has the 1600 to midnight watch on arrival day. The purpose of this paragraph is to prevent a split shift assignment of watchstanding Officers on arrival day in order to complete their eight-hour day.

3. Routine Port Watches Abroad. At all times when port time is in effect in foreign ports, routine watches between 1600 and 0800 shall be assigned to the regular watchstanding Officers. Watches so assigned shall be considered the Officers' normal day's work.

During the course of a voyage, it shall be the duty of the Chief Officer to assign the routine night watches in such a rotational manner so as to insure a reasonably equal division of night port watch earnings for the Licensed Deck Officers. No watches so assigned shall create an additional obligation for payment of overtime as opposed to premium time. The Chief Officer shall stand port day watches on Saturdays, Sundays and Holidays when cargo operations are involved.

4. Cargo Activity—Arrivals/Departures. On vessels of Classification "B" and above, in all ports, no less than two (2) watchstanding Licensed Deck Officers are to be on duty and on deck for the first hour after the vessel has commenced cargo activity and the last hour prior to completion of cargo activity when more than three (3) gangs are involved.

In Port — Tankers

a. Eight (8) hours shall constitute a day's work. A day shall be reckoned from midnight to midnight. The normal hours of labor while port time is in effect, shall be between 0800 and 1700 from Monday through Friday, inclusive, except as otherwise provided in this Section.

Where a Licensed Deck Officer works in excess of eight (8) hours in one day, i.e., midnight to midnight, even though part of work shall be performed at sea and part in port, he shall be paid overtime for such hours worked in excess of eight hours in said one day, except as otherwise provided in this Section.

b. Overtime shall be paid (1) for all work performed in port on Saturdays, Sundays and recognized holidays; (2) for all for work performed in port, including the standing of routine watches in excess of eight (8) hours per day and (3) for all work performed in domestic ports between 1700 and 0800, Monday through Friday, inclusive, except as otherwise provided in this Section.

c. Premium rate shall be paid for standing routine watches in foreign ports between 1700 and 0800, Monday through Friday, inclusive.

d. After a vessel has arrived in all ports (foreign and domestic) and port time is in effect, only one of the regular Licensed Deck Officers shall perform the work necessarily required on weekdays during normal operations between the hours of 0800 and 1700. The expression "one of the regular Licensed Deck Officers" shall mean that one and the same man only will be aboard for the entire time between 0800 and 1700. The other Licensed Deck Officers are to be permitted to go ashore (if the regulations of the port do not prohibit shore leave and/or excused).

When the vessel's stay in a foreign port is 24 hours or more the watches after 1600 and before 0800 shall be arranged in approximately 8 hour periods. These watches shall be divided as equally as possible between the watchstanding Licensed Deck Officers.

To comply with this Section a Rotation Schedule must be adopted amongst the Licensed Deck Officers. First, it is up to the Licensed Deck Officers on each vessel to determine the order in which they will take their respective turns to remain on duty as the vessel arrives in successive ports. Second, it is the responsibility of the Master to enforce the schedule of rotation as agreed amongst the Licensed Deck Officers. This is to mean that the Master will make the necessary assignment for the day watch in accordance with the agreed schedule. In the event the Licensed Deck Officers are unable to agree upon a schedule, the Master shall designate it.

The Chief Officer in all ports (domestic and foreign) shall not be in the rotation. His normal workday shall remain between the hours of 0800 and 1700. For any work *in excess of three consecutive hours during that period, he shall be paid overtime. For any work outside his normal work day, he shall also be paid overtime, irrespective of application of the prior sentence. However, when a vessel's expected stay in a foreign port is more than 48 hours, the Chief Officer will be included in the rotation schedule.*

It should be particularly noted that the Licensed Deck Officer who has stood the watch between 0800 and 1700 hours has worked a total of nine (9) hours. No overtime or penalty meal hour is payable for the one (1) hour in excess of eight (8) hours. Another point to remember is that on days of arrival and departure, the watchstanding Licensed Deck Officer by virtue of the Rotation Schedule could conceivably work thirteen (13) hours between midnight and midnight. As an example, let us assume that the 12 to 4 watch on arrival day was due for the day watch in accordance with the Rotation Schedule. Between midnight and midnight of arrival day he will have worked from 0000 to 0400 for four (4) hours. In addition to this, he will have worked from 0800 to 1700 hours for (9) hours for a total of thirteen hours. Overtime would have to be paid from 1300 to 1700 hours, four (4) hours.

[Vessels engaged in the Coastwise West Coast Trade including Alaska—When vessels are engaged in the Coastwide West Coast trade including Alaska, the Chief Officer shall work three consecutive hours in port between the hours of 0800 and 1700, Monday through Friday, without the payment of overtime or premium time except for that premium time payable in lieu of a rest period for hours worked between midnight and 0800 when a rest period cannot be granted between the hours of 0800 and 1700. Such three consecutive hours of work shall not be considered in computing excess of eight hours' work in any one day. Similarly, the Licensed Deck Officers assigned in rotation between 0800 and 1700 Monday through Friday shall not receive overtime or premium time except for that premium time payable in lieu of a rest period for hours worked between midnight and 0800. Such period of work from 0800 to 1700 shall not be considered in computing excess of eight hours' work in any one day except on days of departure and only for that period after 1700 hours on regularly assigned sea watch.]

If it is necessary under the foregoing circumstances to have an extra Licensed Deck Officer aboard between 0800 and 1700, the extra man aboard (the Licensed Deck Officer whose turn it is to be ashore) will be paid overtime for all work performed during these hours. The Master shall decide who the additional Licensed Deck Officer shall be in the event such additional Licensed Deck Officer is required.

This subsection does not restrict the Company from utilizing the services of all the Licensed Deck Officers while the vessel is in the shipyard or in a state of emergency repairs. At such time, the full complement of Licensed Deck Officers or any part thereof may be used.

e. When the ship's Deck Officers are assigned to a routine night, weekend, or holiday watch, they shall not be required to perform regular maintenance repair work except which may be occasioned due to a mechanical failure occurring during such night, weekend or holiday watch.

SECTION XIII. SEA WATCHES

1. Setting of Sea Watches.

DRY CARGO: On days of departure from non-foreign ports, sea watches shall be set at the time of sailing, but not later than noon. Port Relief Officers shall be retained until the vessel sails. On days of departure from foreign ports, sea watches shall be set at 0000 (midnight) on day of sailing.

TANKERS: On days of departure sea watches shall be set at the time of sailing.

2. Breaking of Sea Watches.

a. DRY CARGO: In non-foreign ports, sea watches shall be broken one (1) hour after the vessel is securely anchored, moored or made fast to the dock. in foreign ports, sea watches shall be broken one (1) hour after the vessel is securely anchored, moored or made fast to the dock where the vessel is to remain in excess of twenty-four (24) hours.

TANKERS: Sea watches shall be broken one (1) hour after the vessel is securely anchored, moored or made fast to the dock.

b. DRY CARGO and *TANKERS*: Port time conditions shall apply whether or not watches are broken.

3. Sailing Board Requirements

a. Licensed Deck Officers will be informed by means of a sailing board as to the scheduled departure of the vessel. The sailing time shall be posted at the gangway on arrival when the vessel's stay in port is twelve (12) hours or less.

b. When the vessel's stay exceeds twelve (12) hours, the sailing time shall be posted eight (8) hours prior to scheduled sailing, if before 2400. If scheduled sailing is between 0000 and 0800, sailing time shall be posted not later than (Dry Cargo-1600; *Tanker-1700*). When the vessel arrives on a weekend between (Dry Cargo-1600; *Tanker-1700*) Friday and 0800 Monday, and is scheduled to sail prior to 0800 Monday, the sailing board shall be posted not later than one (1) hour after arrival. When a vessel is scheduled to sail on a weekend between (Dry Cargo-1600; *Tanker-1700*) Friday and 0800 Monday, the sailing board shall be posted no later than (Dry Cargo-1600; *Tanker-1700*) Friday.

c. It is agreed as part of the sailing board clause in (b) above, that if Friday is a holiday, the sailing board shall be posted not later than (Dry Cargo-1600; *Tanker-1700*) Thursday. Similarly, if Monday is a holiday, then the following Tuesday shall be substituted in lieu of Monday.

d. Licensed Deck Officers shall be required to report on board and be available for duty (1) hour before time posted on sailing board.

e. If the vessel's departure is delayed and the delay is due to cargo activity, bunkering, or taking stores, the new time of departure shall immediately be posted on the board and if such delay exceeds (Dry Cargo-one (1); *Tanker-two*

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(2) hour(s), the Licensed Deck Officer off duty shall be dismissed and shall receive two (2) hours' premium time for such reporting. In the event the sailing board is changed to a new sailing time, the Licensed Deck Officer on duty at the time the board is changed, shall not be entitled to a delayed sailing penalty. The same requirements as to premium payments apply to the watch on duty on weekends and holidays.

f. DRY CARGO: If the sailing board has not been reposted and if the vessel does not sail within one (1) hour after the original scheduled sailing time, Licensed Deck Officers off duty shall, in addition to the two (2) hours' premium time for reporting back, receive continuous premium time pay from the original scheduled sailing time posted until the board is reposted or until the vessel's lines are cast off or the anchor is aweigh, if at anchor. In the event that a Licensed Deck Officer on duty is relieved during this period of delayed sailing, then he shall be considered an off-duty Licensed Deck Officer and shall receive continuous premium time pay from the time he is relieved of duty until departure time.

For sailing board purposes, "departure time" shall mean "last line off dock" or "anchor aweigh" or "secured for sea" in the case of barge carriers.

f. TANKER: If the sailing board has not been reposted and if the vessel does not sail within two (2) hours after the original scheduled sailing time, Licensed Deck Officers off duty shall receive continuous premium time pay from the original time of reporting aboard in accordance with the requirement of 3(d) of this Section until the board is reposted or until the vessel's lines are cast off or the anchor is aweigh, if at anchor. In the event that a Licensed Deck Officer on duty is relieved during this preiod of delayed sailing, then he shall be considered an off-duty Licensed Deck Officer and shall receive continuous premium time pay from the time he is relieved of duty until departure time.

For sailing board purposes, "departure time" shall mean "last line off dock" or "anchor aweigh" or "secured for sea" in the case of barge carriers.

g. It is agreed that the premium time rate applicable for failure to comply with any provision in this Section shall be payable to the Master on the same basis as the Licensed Deck Officers.

h. If a Licensed Deck Officer is required to work after having reported back for the sole purpose of sailing, the premium time penalty prescribed by this Section shall be payable in addition to any other compensation due for work performed.

i. TANKERS: Premium time pay prescribed above shall not apply if sailing is delayed on account of weather, such as rain, fog, or any other condition beyond the vessel's control.

4. Rest Before Watch. No Officer shall be required or permitted to take charge of a watch upon leaving or immediately after leaving port unless he has had at least (6) hours off duty within the twelve (12) hours immediately preceding the vessel's actual sailing time.

SECTION XIV. PORT TIME, ARRIVAL AND DEPARTURE

1. Arrival in Port. A vessel shall be deemed to have arrived and port time shall be in effect thirty (30) minutes after it has anchored or moored **(dry cargo)**—or remains underway) at or in the vicinity of a port (or other place of loading or discharging) for the purpose of cargo activity, ballast, passengers, mail, bunkers, storing, undergoing repairs, fumigation, lay-up, awaiting orders or berth.

2. Clarification. The term "anchored or moored" **(dry cargo**—or remains underway) at or in the vicinity of a port (or other place of loading or discharging) shall cover any situation where the facts of the situation disclose that the vessel has as its immediate destination, the specific port or other place of activity described in (1) above.

3. Port Time Not Applicable. Port time shall not apply:

a. To arrivals for emergency anchorage, mooring or heaving to solely for reasons of safety, or,

b. While awaiting pilot, quarantine, pratique, safe weather or tide; it is agreed, however, that in the case of awaiting pilot, quarantine and pratique, any such exception shall not apply where the delay is because the vessel is awaiting a berth and in any event shall only apply where the delay is caused by the arrival of the vessel during hours that the officials granting quarantine or pratique are not on duty and only for such limited period.

c. Port time shall continue in effect after it has been established until the vessel's final departure as defined in subsection 6 below.

4. Vessel Clearance Requirements

a. In all ports where twenty-four (24) hour quarantine, immigration, customs, security or Department of Agriculture service is available, the Company shall make a diligent effort to obtain clearance for the vessel on arrival. Port time shall be deemed to be in effect no later than the commencement of any of the activities described in subsection (1) above.

b. In order to avoid disputes concerning this section, the Company shall supply the Organization with an English translation of the official duty hours of quarantine, immigration and custom officials in all ports listed by the Organization.

c. In all foreign ports where formal local government clearance is granted by radio or waived, port time shall commence as described in subsection (1) above.

5. Interrupted Port Stay. After original arrival in a port where, because of security or vessel safety reasons, a vessel must leave the harbor and then returns to the same port for the original purpose of the call, the following shall apply:

a. The vessel shall be considered to be under port time condition for the purposes of watches stood after 1700 and prior to 0800 on weekdays, and at any time on Saturdays, Sundays or Holidays.

b. Under the conditions of subsection (5), it is agreed that the Master shall be entitled to the shift ship

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minimum for each departure or actual time worked at the shift ship rate whichever is greater and shall be entitled to the shift ship minimum for each arrival if his time has not been continuous.

(This subsection shall only apply to vessels required to leave port and return as a result of civil strife, acts of war, or open hostilities, armed conflict or rebellion, or any similar circumstances affecting the safety or security of the vessel and/or its personnel.)

6. **Departure from Port**. A vessel shall be deemed to have departed and port time terminated thirty (30) minutes before mooring lines are cast off or anchor is aweigh for the purpose of putting to sea directly, **(dry cargo:—** when a vessel is underway and on port time under the provisions of subsection (1) above, port time shall terminate thirty (30) minutes before the vessel is secured for sea and starts moving seaward).

SECTION XV. CONFINEMENT TO VESSEL

1. Whenever a vessel is under port time conditions, as provided in Section XIV, the Licensed Deck Officers, including Masters, entitled to be off watch in accordance with this Agreement shall be entitled to shore leave.

2. **Ship to Shore Boat Service**

a. When a vessel arrives at a safe harbor for a stay of more than eight (8) hours, the Company shall furnish round trip ship-shore boat service (unless bad weather prohibits), when regular service is available.

b. Such service shall be so scheduled as to enable Licensed Deck Officers to go ashore soon after coming off duty and to return to the vessel in time to go on watch, and shall provide a minimum of six (6) round trips daily.

c. The Master shall discuss the scheduling with the Licensed Deck Officers as well as with other departments. If such service is available when weather permits, and is not provided, the following shall apply:

When Licensed Deck Officers are entitled to shore leave and denied same for any reason except as provided below, or when launch service is not provided as required by this Agreement, the premium rate shall be paid for all hours while off watch.

3. In port, where regular launch service is not available, the Licensed Deck Officers may make their own arrangements for transportation and the Company agrees to reimburse either the Licensed Deck Officers or the owner of the boat up to two ($2) dollars round trip per man carried once every twenty-four (24) hours.

4. Where such local government restrictions prohibit shore leave, such orders must be in writing from proper shore authorities and shall be posted on the vessel's bulletin board and entry made in the ship's log book. Under the above circumstances, the Company shall produce a copy of the government restriction order when the Licensed Deck Officer is paid off. If it is not possible to get a copy of such restriction order, the Master will prepare a letter stating the terms of restriction for presentation to either the agent of the government or military and, if agent acknowledges receipt of such letter, this will be ample proof of such restriction.

This shall not apply in cases of emergency as defined in Section XXV of this Agreement.

5. The only reason to deny shore leave is where prohibited by local law, such as denial of pratique or quarantine. Any such prohibition must be posted on the bulletin board and placed in the log. Failure to do so shall conclusively preclude any claim by the Company that shore leave was prohibited.

SECTION XVI. PORT RELIEF OFFICERS

1. **Compensation.** The compensation for Port Relief Officers which incorporates the vacation benefit shall be as specified in Schedule "A".

2. **When to be Employed.** Port Relief Officers, when available must be employed on a Company vessel in service in all United States ports, including Puerto Rico, during Saturdays, Sundays, recognized holidays and the hours between 1600 and 0800, Monday to Friday inclusive. The Port Relief Officer shall be retained until the vessel sails. ***Port Relief Officers shall continue to service tankers in the same ports and areas as previously authorized. Any additional ports or areas shall be negotiated between the Parties.***

3. **Hours of Work.** A normal tour of port relief duty on weekdays is either 1600 to 2400, or 0000 to 0800; present practice in the various ports shall continue on weekends and holidays.

4. **Minimum Hours.** Whenever a Port Relief Officer's services are required, he is entitled to a minimum of seven (7) hours of pay.

a. TANKERS: Maximum Hours. No Port Relief Officer shall work for a longer period of time than sixteen (16) consecutive hours, except in the event of an emergency.

5. **Less Than Four (4) Hours of Work.** The Company is not required to call for a Port Relief Officer's services when the foreseeable tour of duty is less than four (4) hours. If, however, the short tour of duty immediately precedes or follows the regular tour of duty of another Port Relief Officer, he shall also be employed for the short tour, being paid only for the hours actually worked. The Company agrees that it will not violate the four-hour rule by the device of posting an improper sailing time on the sailing board.

6. **Duty to Order Port Relief Officers.** All Port Relief Officers must be ordered through the offices of the Organization during the Organization's regular office hours, Monday through Friday, excepting holidays, provided however, they shall be ordered not later than 1330 hours. Neglect to make timely request for Port Relief Officer services will render the Company liable to pay for all uncovered time until a Port Relief Officer is on duty. When Port Relief Officers are ordered, their pay will commence at the time for which they are ordered to report to the vessel. Such pay-

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ment shall not be denied in the event of a delay in the vessel's arrival.

7. Uncovered Time. Full compensation for all uncovered time shall be paid to the MMP Special Pension or Welfare Fund, excepting that contributions that would normally be payable to the several MM&P Plans shall be paid to the appropriate Plan.

8. Shifting Vessel. When a vessel is shifted during a Port Relief Officer's tour of duty:

a. If the shift is within a port, the Port Relief Officer may be required to remain aboard.

b. If the shift is to another port, the Port Relief Officer must leave the vessel.

c. The past interpretation of (a) and (b) with respect to definition of "port" shall be continued.

9. Using ship's Officers. The Company may keep the vessel's regular Officers on duty while the vessel is in port, in addition to employing Port Relief Officers.

10. Port Relief Officers' Facilities. On Company-owned vessels, the Company shall make available to Port Relief Officers employed aboard the vessel, suitable secure facilities for changing clothes and cleaning up in the vicinity of the Officers' quarters, and shall furnish soap and towels. Present standards and facilities on each vessel shall not be downgraded and shall not be used for the stowage of cargo, stores or any other material. When the above facilities are not furnished, the Port Relief Officer shall receive the lodging allowance for each tour of duty on the vessel. On other than Company-owned vessels, the suitable facilities mentioned herein shall be reviewed on an individual ship basis.

11. Penalty Work. Relief Deck Officers shall not paint, chip, scale or polish bright work, or do any cleaning up work in the Deck Department, or any other work commonly assigned to the unlicensed personnel. If for any reason, Relief Deck Officers are required to do such work, they shall receive, in addition to their regular compensation, the penalty rate while such work is being performed. It is mutually understood that the intent and purpose of this paragraph shall not be abused by either party.

12. Meals.

a. When hot meals are being served during the ship's regular meal hours, the Port Relief Officer shall be served in the regular Officers' dining room during his tour of duty. *(Tankers—if circumtances permit.)*

b. A hot midnight meal shall be furnished Port Relief Officers standing a night watch in excess of eight (8) hours and a noon meal on Saturday, Sunday, and holidays, or in lieu thereof, subsistence in accordance with Section XIX for each meal not furnished.

13. Travel Expenses. The Company shall reimburse round trip traveling expenses of fifty (50c) cents or more. Round trip travel time from the Organization's office to the vessel shall be paid for Port Relief Officers at the appropriate wage rate; but, if quarters are provided on the vessel for the Port Relief Officer's use during the period of his employment, and the Port Relief Officer lives aboard, he shall be paid only for his watchstanding and for the travel time for one round trip. On dry cargo vessels "travel time" shall be agreed upon by the parties for all ports served. ***On tankers, "travel time" and "expenses" shall be agreed upon by the Parties for all ports served, but in no instance shall the combination of travel time and transportation expenses be less than $10.00 for each round trip.***

In ports where existing travel and transportation schedules are presently in existence, they shall continue to be in effect and transportation costs shall be adjusted to conform with any changes in transportation costs in a timely manner. The current travel schedules shall be ordered to be incorporated in this Agreement. On PMA vessels, subsistence and lodging shall be provided on the vessel for the duration of the tour of duty of the Port Relief Officers in the West Coast Ports specified in Appendix A as marked with an X.

14. Payoff Procedures. The present practice of paying Port Relief Officers in the offices of the Organization shall continue. In areas where this service is not afforded, the Port Relief Officer payoff shall be as follows:

A Port Relief Officer shall be paid off no later than 1700 on the day his employment ends (except weekends or holidays), if he has presented himself for payment at the designated place before 1400. He must be paid an amount equal to the regular wage rate for each hour's delay (up to a maximum of eight in any twenty-four hour period). If he must return to the vessel for his payoff, he shall be compensated additionally for transportation expense and travel time.

15. Port Relief Officer Requirements. DRY CARGO. A member in order to qualify for registration as a Port Relief Officer must have been in good standing in the Organization for two (2) years, and must have sailed a minimum of one (1) year on MM&P contract vessels.

15. Port Relief Officer Requirements. TANKER. A member in order to qualify for registration as a Port Relief Officer must have been in good standing in the Organization for two (2) years, and must have sailed a minimum of one (1) year on MM&P contract vessels.

In full recognition of the increasing need for the protection of our environment and ecology, the Organization agrees to continue to use its best efforts to insure that a Port Relief Officer shall not be dispatched to a tanker engaged in the carriage of liquid or gaseous cargo, unless in the opinion of the Organization, the Licensed Deck Officer being dispatched is qualified and reliable to perform the work required of any of the Licensed Deck Officers on the particular type of tanker to which he is being dispatched.

The Company agrees to provide sufficient information regarding the required operation upon placement of the job order so as to insure that the Organization can continue to provide Officers with the required training and professional experience necessary to supervise the work to be performed.

16. Adequate Personnel. TANKER. The Port Relief Officer shall have a full deck watch available to supervise during any cargo transfer operations or tank cleaning operations.

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17. Rest Before Watch. *TANKER. A Port Relief Officer shall not be permitted to assume a watch unless he shall have had at least eight (8) hours off-duty prior to assuming the watch.*

18. Company Port Relief Officers. **DRY CARGO.** Nothing in this Section shall prevent the Company requesting from the Organization a regular Company Deck Officer or other Licensed Deck Officer on a daily or monthly basis who may be selected by name when available and registered on the Shipping List of the Organization, in addition to the night or day Port Relief Officer, for the purpose of supervising the loading and discharging of cargo and other reasons while the vessel is on port time. It is understood that the Company will utilize this right whenever the volume of work becomes excessive for the regular Port Relief Officer.

18. Company Port Relief Officer. *TANKER. Nothing in this Section shall prohibit the Company from selecting a Port Relief Officer from the Shipping List for employment on a monthly basis. An Officer so selected shall meet the same qualifications concerning eligibility for employment as any other Port Relief Officer. When an Officer is employed on a monthly basis, the following conditions shall apply:*

a. Compensation for such a monthly Port Relief Officer shall be equivalent to that of a non-watchstanding Chief Officer employed aboard a vessel in Class A power tonnage classification.

b. All work performed in excess of one hundred seventy three (173) hours shall be paid for at the overtime rate specified for a Chief Officer of a Class A tank ship.

c. He shall be reimbursed for transportation expenses, and shall receive credit for pension, welfare, vacation and all other benefits due a Licensed Deck Officer under this Agreement. The non-watchstanding allowance shall not be included in the computation of vacation benefits.

d. All payments of monies due shall be made through the Port Relief Officer program of the Organization at such intervals as may be designated by the Company, but not less often than on a bi-weekly basis.

e. The Company will also be required to make full contributions to the appropriate MM&P Plans as required for any other Licensed Deck Officer employed under this Agreement.

f. Vacation for a monthly Port Relief Officer shall be mandatory upon the completion of each ninety (90) day period of employment.

g. The duties of monthly Port Relief Officers shall be restricted to those of the regular Licensed Deck Officers aboard the vessel and he shall be governed by the same working conditions as all other Port Relief Officers.

SECTION XVII. SHIFTING SHIP

1. Inland Waters. After the vessel has arrived in port, as defined in Section XIV, any subsequent move in inland waters, bays, rivers, and sounds shall be regarded as shifting ship except as hereinafter noted:

a. Puget Sound—moves from U. S. to Canadian ports, and vice versa.

b. Hudson River—New York to Albany, and vice versa.

c. River Platte—Buenos Aires or Montevideo to Rosario and points north, and vice versa.

d. Chesapeake Bay—Baltimore to Norfolk, or vice versa.

e. Panama or Suez Canal transits—unless engaging in cargo activity or bunkering at both ends. (Embarking or disembarking of passengers or taking aboard fresh provisions shall not be construed as cargo activity.)

2. Computation of Time. When shifting ship under the circumstances which require the payment of overtime:

a. Time for Licensed Deck Officers, except the Licensed Deck Officer on watch, shall commence thirty (30) minutes prior to the scheduled time of the shift, and shall stop when the vessel is securely moored or made fast, or until relieved; and the Licensed Deck Officer on watch shall be paid overtime from standby to all fast or until relieved: provided a minimum of three (3) hours shall be paid for each call. If any scheduled shift is postponed for three (3) hours or more, the new shift shall be considered an additional call back for men off watch. It is understood that there will be no duplication or pyramiding of overtime and premium time by the Licensed Deck Officer receiving premium time for a regular watch and who receives the shift ship overtime minimum.

b. Time for the Master when shifting ship under circumstances requiring the payment of extra compensation including the applicable minimums shall commence at the same time as the other Licensed Deck Officers and shall cease when the vessel is all fast, except as hereinafter provided.

During shifts from Delaware River ports to Baltimore through the C&D Canal or vice versa, and shifts from Galveston to Houston or vice versa, the Master shall receive a minimum of four (4) hours' extra compensation, and if required on the bridge for more than the four (4) hours, his presence shall be logged and he shall receive such additional compensation as the log book may reflect.

c. If the Officers are called back at any time on Saturday, Sunday or a holiday, a minimum of four (4) hours' overtime shall be paid for each call. If any scheduled shift is postponed for the applicable minimum or more, the new shift shall be considered an additional call back.

d. If shift starts at or before 1700 during normal working hours and the shift is concluded after 1700, the shift minimum is payable. ***This shall not be applicable to the Licensed Deck Officers on duty in rotation on tankers unless he is relieved and subsequently called out.***

e. For the purpose of this Section, a call back to haul ship shall be considered a shift.

f. Any Licensed Deck Officer called back for a shift from dock-to-dock shall be called out at both ends of the shift.

3. Required Duties While Shifting. The duties of Licensed Deck Officers used for shifting ship during overtime

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hours shall be limited to work necessary for the shifting of the vessel to the next berth. When shifting ship on overtime hours, if Licensed Deck Officers are required to do any work not directly related to shifting, they shall be paid at the penalty rate for time actually worked, in addition to overtime for the shift—*except that on tankers, the necessary work limited to cargo operations including the supervision of tank cleaning shall be payable at the premium rate in addition to the shift overtime.*

4. Port Relief Officer Duties. The duties of Port Relief Officers shifting the ship when required in accordance with Section XVI, shall be the customary duties of the regular ship's complement of Licensed Deck Officers.

a. A Port Relief Officer shall not be required to stand a navigational bridge watch in excess of four (4) hours without being relieved of duty by another Licensed Deck Officer or Port Relief Officer. If the shift exceeds four (4) hours, the Port Relief Officer shall assume the regular four (4) hours on and eight (8) hours off rotation prescribed for Sea Watches.

b. When the vessel does not dock before the end of his assigned period of duty, his pay shall continue until the vessel is secured at the dock, but shall not continue for more than two (2) hours beyond the normal end of his tour of duty unless he is required to maintain an alert watch.

c. TANKERS. A Port Relief Officer required to make the shift shall in addition to all other compensation be reimbursed ten ($10.00) dollars per shift.

SECTION XVIII. PILOTAGE

1. Pilotage Qualifications. The Company and the Organization agree that while each Master should be qualified to pilot his vessel on the pilotage grounds over which the vessel trades, piloting is not a normal duty of a Master or any of the other Licensed Deck Officers. The Company agrees that obtaining or possession of pilotage endorsements shall not be a precondition to employment or a requirement for continuing employment.

2. Restriction on Pilotage. A Licensed Deck Officer serving aboard a contract vessel in a capacity other than pilot shall not perform pilot services in a United States port except in cases of emergencies, or unless a Memorandum of Agreement permitting pilotage to be performed has been executed between the Company and the Organization.

3. Pilot Preference. The Company agrees that in the hiring and use of pilots in U. S. ports to give first preference to pilots who are members of an affiliate or division of the Organization whenever and wherever on the effective date of this Agreement such affiliate or division exists for the purpose of providing pilot services.

4. Pilotage Compensation. When required to perform pilot services in other than an emergency, additional compensation shall be paid as follows:

a. U. S. Areas—none, except as stipulated in pilotage memorandum.

b. Non-U. S. Areas—one (1) hour overtime for each hour of piloting with a minimum payment of two (2) hours for each move on the pilotage grounds.

5. Pilotage Grounds. Pilotage grounds shall mean that body of water upon which the vessel would be required by law, regulation, or decree of government to use the services of a pilot, or where pilots are available to be employed.

6. Assistance While Piloting. When the Master is required to perform pilot services during periods of restricted visibility, another Licensed Deck Officer in addition to the watchstander shall be stationed on the bridge to assist in the navigation and handling of the vessel or performing such other duties as the Master may direct. The presence of the additional Licensed Deck Officer on the bridge shall not be mandatory when the Master is piloting at other times.

7. Alaska Trade. Special conditions which apply to vessels in the Alaskan Trade may also be afforded to other contract vessels in the Coastwise or Intercoastal trades after appropriate negotiations.

a. Definition. Vessels in the Alaskan Trade are defined to mean those vessels in the domestic trade operating to and from U. S. Pacific Coast ports and Alaskan ports and does not include vessels operating in the Offshore Trade.

b. Pilot Required. On vessels operating in the Alaska Trade, not less than one Pilot shall be employed as a Licensed Deck Officer on vessels operating on scheduled voyages east of the eastern side of the entrance to Cook Inlet. Pilots shall not be required on voyages where the direct route is via the outside passage to Alaska Peninsula, Aleutian Islands or Bering Sea ports from and to Continental U. S. ports.

i. The Company shall have the right to select its own Pilot provided he is a member of the Organization. Wages, hours and conditions are subject to negotiations between the Parties.

c. Pilot not Carried. When a Pilot is not carried and during the voyage the vessel is required to proceed through the Inside Passage, the Master of such vessel shall receive after entering the Inside Passage and for the balance of the northbound or southbound voyage as the case may be, in addition to his regular rate of pay the basic monthly wages which would normally be paid a regular Pilot, or his normal overtime rate for the period of time he is actively engaged in piloting whichever shall be greater.

8. Safe Boarding by Pilots. The rigging of pilot ladders and the embarkation and disembarkation of pilots shall be supervised by a Licensed Deck Officer. Pilot gear shall not be used for any other purpose.

SECTION XIX. LIVING CONDITIONS

1. Quarters. Each Licensed Deck Officer shall have his own individual stateroom. All Officers' quarters shall be properly equipped with fresh running water, cleaned, heated and lighted at all times during occupancy. Each vessel shall provide a washroom and toilet facilities for the use of the

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Licensed Deck Officers only; this washroom to be equipped with fresh hot and cold running water, and fresh water shower facilities as well as sanitary drainage.

2. Linen Supply. The Licensed Deck Officer shall receive an adequate supply of towels, and blankets of good quality and adequate size. Clean bed linen will be provided weekly and in non-air conditioned vessels in the tropics, twice a week. When linen is not changed as indicated, each Licensed Deck Officer shall be compensated by two (2) hours' premium pay for each week (or half-week, where appropriate.)

3. Dining Facilities. Licensed Deck Officers, on other than passenger vessels, shall eat in the Officers' Dining Saloon. Each Officer shall be entitled to occupy his regular place setting at his customary table whether in port or at sea.

When in port, unauthorized Shoreside personnel will continue to observe and respect the privacy of the Officers' Dining Saloon and Pantry, and specifically, will not utilize these areas as a work space, lounge or recreation area. The present prohibition of unauthorized personnel partaking of "night lunch" and coffee in the Saloon Pantry is re-affirmed. When necessary to replace Officers' Pantry refrigerators aboard vessels after June 15, 1972, such refrigerators shall be stainless steel (or, if mutually agreed, other non-corrosive alloy material) and shall have a capacity of at least seven (7) cubic feet.

4. Food Standards. Adequate food, properly prepared and served shall be provided the Licensed Deck Officers. Fresh milk, bread, fruit and vegetables will be furnished at every port where available; and if supply is available, a sufficient amount will be obtained to last until the next port of call, or sufficient to last until the food would with ordinary good care, spoil. Frozen foods shall be considered the equivalent of, and serve the same purpose as fresh foods. Vessels shall be equipped with an icemaking machine of sufficient capacity to insure no shortage of ice in the Officers' Saloon. Food bought in foreign ports must be up to American health standards. The Organization reserves the right to negotiate a Food Program to insure contractual compliance with this subsection.

5. Meal Hours. Meals shall be served over a one hour period and a reasonable time of one-half hour shall be allowed in which to eat when the Officer is not late due to his own fault.

Meal hours may be varied not more than one hour in either direction to meet the operational needs of the vessel, or to permit the entertainment of shore personnel, passengers, VIPs, etc., provided adequate notice is given, with the exception that the dinner hour cannot be advanced.

6. Penalty Meal Hours. If for any reason, either at sea or in port, a Licensed Deck Officer is not permitted a full unbroken meal hour, (other than for emergencies or normal relieving for meals), he shall be paid one hour premium time in addition to any other compensation payable, and at least an unbroken hour upon completion of his work at hand.

If for operating necessity, the unbroken hour is unable to be granted, one hour penalty pay shall be paid in addition to any other compensation payable. In all instances, a hot meal must be provided.

7. Midnight Meals and Night Lunches. Adequate night lunches shall be available to Officers working night watches. A hot meal shall be served to Officers who work more than eight hours after 1700 or before 0800, or in lieu thereof, subsistence allowance in addition to any other compensation payable.

8. Coffee Time. A work break shall be taken and coffee time observed at 1000 and 1500, or at times near these hours.

9. Rest Periods. A Licensed Deck Officer who works between 0000 and 0800 shall be entitled to a rest period between the hours of 0800 and 1700 the same day for each hour worked. Failure to be allowed same, except for emergencies or required drills, shall be payable as described in Section XI.

10. Subsistence and Quarters' Allowance

a. When meals are not furnished as required by this Agreement, subsistence allowance amounting to ten dollars and fifty ($10.50) cents per day ($2.00 breakfast; $3.00 for lunch; $5.50 for dinner) shall be paid. The subsistence allowance for failure to provide a hot midnight meal shall be three ($3.00) dollars.

b. When living quarters are not furnished as required in this Agreement, a room allowance of ten dollars and fifty ($10.50) cents per night shall be paid for each Licensed Deck Officer for lodging claims in port and six dollars fifty ($6.50) cents per night for lodging claims at sea.

No more than one (1) lodging claim shall be paid to any Licensed Deck Officer in any twenty-four hour period.

c. The respective amounts due in (a) and (b) above may be adjusted to any other reasonable expenses incurred when substantiated by vouchers. The standard of reasonableness for respective ports will be established by mutual agreement between the parties.

11. Room Allowance — In port. When a vessel is in port and any of the following provisions are not met, room allowance shall be payable:

a. When heat, lighting facilities, regular sanitary facilities, or hot water facilities are not provided men off watch for a period of three (3) hours or over, and on air-conditioned vessels in hot weather when air-conditioning is broken down and no attempt is made to effect repairs on a timely basis. Also where fans are not provided on air-conditioned vessels, and air-conditioning is not available to men off watch for a period of three (3) hours or over during hot weather.

b. When the Officer's quarters have been painted and the paint is not absolutely dry, and other suitable quarters are not furnished aboard after appropriate relief has

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been requested of the Master or Senior Deck Officer, and not satisfied, and if the Licensed Deck Officer actually goes ashore.

c. At all times when vessel is on dry dock overnight, unless lodging with all facilities including heat, light, hot and cold running water and sanitary facilities are provided aboard the vessel. (Overnight shall mean after 1900 and before 0800).

When vessel is on dry dock at any time between 0800 and 1700, regular lodging allowance will be paid to Licensed Deck Officers on watch between 0000 and 0800.

d. When vessel is being fumigated and not cleared before 2100. In the case of the watchstanders on watch between 0000 and 0800, when such work is being done between 0800 and 1700.

e. When linen and clean blankets are not furnished upon request prior to 1800 on the day the Officer joins the vessel.

f. When (1) maintenance or repair work on ship or on dock (excluding operations involving cargo or stores) such as chipping, welding, riveting, hammering and/or pounding or other noises of similar nature is being performed within 100 feet of the house on the vessel or within 50 feet of the house on the dock at night, or, (2) in the case of the Licensed Deck Officer on the midnight to 0800 watch, when such work is being done between 0800 and 1600, provided the Officer shall be entitled to lodging allowance if he has notified the Master or Senior Licensed Deck Officer that such condition exists and it is impossible to arrange other comparable quarters away from the noise and the officer actually goes ashore.

g. In port, in areas of the world where the customary practice is for port workers engaged in cargo-handling activities to live and eat aboard, the area assigned to them and any accompanying domestic livestock will be located as far as practicable from the Licensed Deck Officers' living quarters. Portable privies will be located at the extreme end of the ship from the Licensed Deck Officers' quarters. Regular daily washdowns of the deck will be effected. Failure on the part of the Company to comply with these requirements will require the payment of room allowance to all Licensed Deck Officers. The requirement that the Officer actually goes ashore to obtain room allowance payment shall not be applicable.

12. Room Allowance—At Sea. When any of the following conditions occur at sea, room allowance shall be paid:

a. When repair or maintenance work such as chipping, welding, riveting, hammering and/or pounding or other noises of a similar nature are being performed on board the vessel within one hundred (100) feet of the ship's house, between the hours of 1800 and 0800.

b. Except for forward of one hundred (100) feet and aft of one hundred (100) feet of the ship's house when repair or maintenance work such as chipping, welding, riveting, hammering and/or pounding is performed before the 1200 to 1600 watch is called, lodging allowance shall be paid to the Licensed Deck Officer who stood watch between 0000 and 0800.

c. When livestock such as pigs, cows, etc. are carried, the deck area where such livestock is carried shall be cleaned, washed down and drained overboard once every twenty-four (24) hours, weather permitting.

Area shall be defined to mean that portion of the deck around or under the livestock vans or pens that can be cleaned and washed down without wetting the livestock or the confines of the van or pen. Non-compliance will make Company liable for payment of room allowance.

d. On air-conditioned vessels where fans are not provided and air-conditioning is not available to men off watch for a period of three (3) hours or over in hot weather.

13. Existing Recreation Rooms. All vessels in service that were required to furnish an Officers' recreation room in prior agreements shall continue to maintain such recreation rooms in accordance with the provisions of such prior agreements, provided that upon replacement of existing television set, the replacement will be a U.S. made 21" color set. The new construction provision relating to the Officers' recreation room shall apply in the case of any vessel now in service which undergoes reconversion after the date of this Agreement where there is a major alteration of the Licensed Officers' quarters.

14. Deck Office. Where a separate office is allocated to the Licensed Deck Officers for required vessel's work, such space will not be taken away and allocated to others.

15. Laundry Facilities. An automatic electric washer and dryer shall be provided for the Licensed Officers on all vessels, in the immediate vicinity of the Licensed Officers' quarters. Equipment shall be properly maintained and adequate spare parts to keep equipment operating shall be carried aboard the vessel. When any equipment cannot be repaired by ship's personnel, it shall be repaired at the first port where facilities and time permit.

SECTION XX. TRANSPORTATION

1. Transportation Defined

a. First class transportation on land is defined as follows:

i. Pullman transportation via rail with roomette on overnight trips.

ii. First class air transportation. When traveling by air, if first class transportation is not provided, when available, the Licensed Deck Officer shall receive the difference in cash between first class air travel and whatever class furnished.

iii. Bus facilities may be used when first class transportation by rail or air is not available.

b. First class transportation over water is defined as follows:

i. When sea transportation must be furnished, not less than cabin class accommodations shall be furnished when available.

c. When traveling over land or over water, Licensed Deck Officers shall have the option of traveling by air.

d. While traveling, ten dollars and fifty ($10.50) cents per day shall be allowed for meals if not furnished.

2. Transportation When Employment Ends

When a Licensed Deck Officer's employment ends by reason of (a) termination of Articles, or (b) termination of the voyage, or (c) the vessel's being sold, laid-up, withdrawn from service or abandoned, or (d) some cause other than his own fault, or (e) illness or injury, he is entitled to transportation to the port of his original engagement, and wages and subsistence at ten dollars and fifty ($10.50) cents per day when not furnished. This subsection is also applicable to an Officer who is discharged for cause if he has completed his voyage and is then paid off.

3. Payment

a. Payment for transportation between U.S. ports shall be an amount of cash equal to the full cost of first class air fare, including tax, between the airport nearest to the port where the obligation to transport arose and the airport nearest the port of original engagement, plus ten dollars ($10.00) for incidental expenses.

b. When transporting a Licensed Deck Officer from or to foreign ports, the Company shall furnish first class air fare ticket or cabin class steamship ticket plus ten ($10.00) dollars for incidental expenses.

c. Unless the Officer has requested that the Company make his transportation arrangements for domestic travel at least twenty-four (24) hours prior to pay-off, Subsection 3(a) shall apply.

4. Port of Engagement. The original port of engagement is defined as the United States or Puerto Rican port in which the Officer was first employed by the Company, regardless of where or what type of articles were signed.

5. Coastwise Trade. Licensed Deck Officer on Coastwise vessels shall not be furnished transportation benefits to the original port of engagement as provided in Subsection 2(a) or 2(b) of this Section unless they have made a complete round voyage. Termination of a Coastwise voyage shall be deemed to take place in the port where the vessel's final payoff of her crew for the voyage takes place.

6. Travel for the Company

a. A Licensed Deck Officer sent by the Company from one vessel to another or from one port to another, or when leaving or returning to his vessel from an involuntary leave of absence initiated by the Company, shall be paid his regular wages and travel expenses in accordance with subsection 3 above. Any other Licensed Deck Officer, when dispatched in accordance with Section II of this Agreeement, when traveling from one port to another, shall be paid his regular wages, lodging and subsistence, unless furnished, and all reasonable travel expenses.

b. For local assignment, in accordance with Section II, to vessels within the jurisdiction of the port dispatching the Licensed Deck Officer, reasonable expenses shall be interpreted to mean the mutually established Port Relief Officer travel expense excepting that travel time, lodging and subsistence shall not be claimed, but reasonable out-of-pocket expenses will be paid.

7. No Transportation. Transportation is not payable to a man discharged for cause before termination of his articles, or to a man separated from the ship by mutual consent before termination of his articles.

Nothing in this Section shall prohibit the payment of transportation benefits to any permanently employed Licensed Deck Officer leaving the vessel for the purpose of vacation or voluntary leave of absence, should the Company elect to make such payment. Under these circumstances, the Licensed Deck Officer shall not be deemed to have been terminated. *Any superior transportation provision of the previous tanker contract shall continue to apply to permanent employees only.*

8. Vessel Withdrawn from Service. When the services of a Licensed Deck Officer are terminated due to the vessel being withdrawn from service in a port other than his original port of engagement, he shall be paid transportation back to his original port of engagement. When the vessel is reactivated, the Licensed Deck Officers entitled to reassignment shall be paid transportation back to the vessel.

9. Excess Baggage. Licensed Deck Officers entitled to transportation to or from a vessel in accordance with the provisions of this Agreement shall be entitled to reimbursement for the cost of excess baggage. Such excess shall be limited to the necessary clothing, uniforms, sextant, and other navigation equipment required by his duties.

10. Preference for U.S. Flag Carriers. Where the Company undertakes to provide air or sea transportation in accordance with this Section, it shall be via U.S.-flag carrier wherever such facilities exist and are available on a timely basis. The same shall apply to air or sea freight shipments of personal effects.

SECTION XXI. DUTIES OF OFFICERS

1. a. The duties of Officers as set forth in different Sections of this Agreement are incorporated by reference in this Section.

The Parties agree that the duties of the Licensed Deck Officers, including Master, shall be maintained as supervisory and professional. It is also agreed that the duties of the Master, Chief Officer, Second Officer and Third Officer, or any other Deck Officer will not be assigned to any other person, licensed or unlicensed.

The duties of the Master, Chief Officer, Second Officer and Third Officer are separate and distinct in many areas and these differences shall be respected. However, the parties recognize that past practices have made some of the duties of the Licensed Deck Officers interchangeable; and this continues to be permissible as in the past.

b. The Master is the Licensed Deck Officer in command of the vessel at all times, subject to the lawful directives of the Company.

The Chief Officer is the Deck Department Head

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and, if qualified, performs the duties of the Master as necessary in his absence.

The Second Officer is normally the navigating Officer and, subject to the direction of the Master, is in charge of all navigational equipment.

The Third Officers stand a regular navigation watch at sea and assist in the normal operation of the vessel as directed by the Department Head.

2. The checking of cargo when shoreside checkers are not employed for this work or when Staff Officer personnel have not been customarily employed for this work in trades where it is and has been the practice for such personnel to perform such work, shall be Licensed Deck Officer duties.

3. Port Relief Officers, when employed, shall perform the same duties required of the regular Licensed Deck Officers.

4. a. DRY CARGO. The duties of Licensed Deck Officers shall include the reading of cargo temperatures and humidity charts, excepting on contract vessels where the actual reading and recording of reefer cargo temperatures has been performed by unlicensed reefer engineers.

4. a. TANKER: The duties of Licensed Deck Officers shall include the reading of cargo temperatures and humidity charts and the gauging, sounding or sampling of cargo tanks, and tanks dedicated to the carriage of wash water for tank cleaning purposes.

b. TANKER: On liquid sulphur carriers where automatic recording and tell-tale alarms are located in other than Deck Department spaces for continual monitoring of cargo temperatures during transits, existing practices concerning temperature recordings shall continue.

5. a. Licensed Deck Officers shall have the shipboard supervision of all hull maintenance, cargo gear maintenance, lifesaving equipment, firefighting and safety equipment, and all cargo activity.

b. DRY CARGO. Licensed Deck Officers shall supervise the opening and closing of hatches, the spotting or trimming of cargo booms or any other type of cargo gear whatsoever. They may activate hydraulic and electric type hatch cover systems or any other type of shipboard cargo gear.

b. TANKER: Licensed Deck Officers shall supervise the opening and closing of hatches, the spotting or trimming of cargo booms or any other type of cargo gear whatsoever. They may activate hydraulic and electric type hatch cover systems or any other type of shipboard cargo gear. They shall also supervise lining up to load and discharge liquid cargo including the connecting and disconnecting of cargo hoses, and the cleaning of liquid or bulk cargo tanks by any method whatsoever.

6. TANKERS: When Staff Officer personnel are not carried, the Licensed Deck Officers' duties shall include that clerical work required for the administration of the vessel or the Deck Department, but shall not extend to clerical work which is the direct responsibility of any other department aboard the vessel for the administration of that particular department.

SECTION XXII. JURISDICTION

1. The Organization shall have the jurisdiction over the work performed by the Licensed Deck Officers. For the safety of and the responsibility for the vessel, its passengers, the crew and the vessel's cargo, the Master or Licensed Deck Officer in charge shall have executive authority, to the extent permitted by law, over the vessel; its personnel, and all of its appurtenances. The executive authority of the Master or the Licensed Deck Officer in charge shall include vessel stability, damage control, lifesaving and firefighting equipment and emergency situations.

It is the purpose of this Section to preserve the jurisdiction of the Organization and not to encroach on the jurisdiction of the longshoremen or any shipboard organization.

2. Except as otherwise provided in this Agreement, only Licensed Deck Officers who are hired and kept in employment pursuant to Section II shall assume the responsibility or perform the duties of Master, Chief Mate, Second Mate or Third Mate on vessels of the Employer. Other vessel personnel or other shoreside personnel shall not be used to perform Licensed Deck Officer duties or work.

3. Specifically, the Organization, through the Licensed Deck Officers, shall have the jurisdiction over the operation of all equipment of the vessel pertaining to navigation (including pilotage, mooring operations and stability) and the exchange of navigational information utilizing the frequency or frequencies available in the area in which the vessel is operating for the exchange of navigational information including specifically, in accordance with applicable law, the bridge-to-bridge communication systems.

The Master or Licensed Deck Officer in charge may direct any other Licensed Deck Officer to make such exchange of navigational information under the direction of the Master or Licensed Deck Officer in charge.

The Licensed Deck Officer shall also have the supervisory jurisdiction aboard the vessel over its cargoes and over the maintenance, inspection and upkeep of the hull, its cargo gear, cargo spaces, decks, deck houses, deck store rooms, and mast houses and other areas of the vessel that are now and customarily have been maintained by the deck department of the vessel. Control and operation of the console control apparatus on the barge crane of a LASH vessel, or any other cargo-handling mechanism on present vessels and on any newly constructed vessels, shall be under the supervisory jurisdiction of the Licensed Deck Officers.

4. The Organization, through the Licensed Deck Officers, shall have jurisdiction over the operation of all computer and related servo-mechanism functions aboard the vessel related to the navigation, including pilotage, of the vessel. The Organization, through the Licensed Deck Officers, shall have the jurisdiction aboard the vessel over the operation of all computer and related servo-mechanism functions which are concerned with the propulsion and

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control of the vessel that are located in the wheel house, bridge, chart room, gyro room or in other areas within the exclusive jurisdiction of the Licensed Deck Officers.

The Licensed Deck Officers shall have jurisdiction over the operation of all computer and related servo-mechanism functions and read-out equipment aboard the vessel related to any equipment, functions or duties under the jurisdiction of the Licensed Deck Officers, including, for example, cargo activity, stability, lifesaving and firefighting equipment and emergencies as spelled out in this Agreement.

5. The Master or Licensed Deck Officer in charge of a watch shall not permit any person to operate or control any of the equipment mentioned or related thereto which is under the jurisdiction of the Licensed Deck Officers, unless said person is a Licensed Deck Officer or is a crew member acting under the direct orders of the Master or Licensed Deck Officer; provided that the maintenance or repair of said computer or related servo-mechanism is being performed as directed by the Master or Licensed Deck Officer, the operation and control of the computer or servo-mechanism shall be permitted in connection with such work. If such operation of the computer or servo-mechanism is undertaken by a person other than the Licensed Deck Officer or the Master, in the regular course of maintaining or repairing said computer or related servo-mechanism, then in such case an entry reciting the time and date said operation is exercised shall be made in the Deck Log Book by the Licensed Deck Officer on watch.

6. If, during the term of the agreement, scientific advancements lead to the installation aboard vessels of computers, related servo-mechanisms, or any type of innovation which performs functions under the jurisdiction of the Licensed Deck Officers, or under the supervision and direction of the Licensed Deck Officers, such functions and such supervision and direction shall remain under the jurisdiction of the Licensed Deck Officers.

7. Location of Equipment

a. Shipboard read-out equipment of the vessel pertaining to navigation, pilotage, shifting or other vessel movement, by whatever method, shall be located in an area under the supervision and control of Licensed Deck Officers.

b. Shipboard remote control equipment pertaining to mechanical mooring devices, anchors, gangways, and such equipment pertaining to cargo activity (except such equipment located in the engine department areas or areas common to both engine and deck departments) shall be located in areas which are under the supervision and control of the Licensed Deck Officers.

8. The Master or Licensed Deck Officer in charge shall have the authority to direct that maintenance or repair of equipment be undertaken by the department responsible for said maintenance and repair. However, nothing in Section XXII, Jurisdiction, shall be interpreted to mean that the Master or Licensed Deck Officer shall perform any maintenance or repair of equipment which customarily has been the responsibility of another department aboard the vessel.

9. Where a Purser Marine Physician Assistant, Purser or Purser Pharmacist is not carried, those of his duties presently performed by the Master and the Licensed Deck Officers on vessels whose manning does not include said Staff Officer rating, and which the Company elects to continue to have performed aboard the vessel, shall remain the responsibility and jurisdiction of the Organization except that medical duties shall continue to be performed by Physicians or Nurses when they are part of the ship's complement.

10. Nothing contained herein shall be interpreted to infringe upon functions that have been under the control and direction of shoreside management except that it is expressly understood that shoreside management must recognize and comply with the jurisdiction provisions of this Section.

SECTION XXIII. CARGO ACTIVITY—DRY CARGO

Part of the duties of Licensed Deck Officers employed under this Agreement are the supervision of cargo activity to insure the safe handling, stowage and carriage of cargoes. No additional compensation shall be due any Licensed Deck Officer during his regular duty hours except as may be described in this Agreement.

When required to perform duties of a non-supervisory nature or other cargo-related duties as may be described in this Section, he shall receive, in addition to any other compensation payable, the penalty rate or premium rate as described below. Proper log entries shall be made to support payments due.

1. Longshoremen Unavailable. When longshoremen are unavailable, and the Licensed Deck Officer is required to actively supervise crew members engaged in cargo activity, he shall be compensated at the penalty rate provided the sailors are receiving the cargo rate of pay. Additional compensation shall not be payable when crew members add to existing lashing or shoring, either in port or at sea, or remove lashings prior to docking.

a. When handling explosives as described in Section XXIV, an additional ten (10%) percent of the hourly penalty rate shall be paid.

2. Crew Members Unavailable. When the Licensed Deck Officer is required to perform the normal duties of unlicensed personnel relating to cargo activity, he shall be compensated at the penalty rate.

The penalty rate shall be payable when the Licensed Deck Officer is required to manually:

a. Open or close hatches, or spot or trim cargo gear,

b. Set or position spreaders or slings for containers, barges or other types of cargo,

c. Operate crane controls himself or ride crane cabs to insure safe and efficient operation,

d. Operate mobile equipment aboard the vessel or on the dock.

3. Liquid Cargo. The premium rate shall be paid to the Licensed Deck Officer who is required to actively supervise

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the loading and discharging of liquid cargo; when this work is performed during overtime hours, the overtime rate shall be paid. Such rates shall also be paid to Licensed Deck Officers who participate in such work, including taking soundings and turning valves. (For the purpose of this paragraph, bunkers discharged for revenue purposes in excess of 25% above the amount required to complete the round voyage shall be considered liquid cargo.)

4. Cleaning of Cargo Compartments

a. Premium time shall be payable to Licensed Deck Officers required to actively supervise the cleaning of tanks in which liquid cargoes of an animal, vegetable, petroleum or chemical nature have been carried, unless they are required to enter same.

b. The penalty rate shall be paid to Officers required to enter tanks after discharge of liquid cargo or other cargoes of a dirty or noxious nature which would require the payment of penalties to other members of the ship's complement when cleaning same.

c. Tank cleaning of any nature shall require the use of explosive meters, oxygen indicators or chemical meters, as appropriate. All equipment used in tank cleaning shall, where possible, be bonded. This shall include, but not be limited to, butterworth and pyrate machines, washdown hoses, portable pumps, blowers and the like.

d. Approved-type safety hats, goggles, and respirators shall be available for use and clean coveralls, rubber boots and gloves shall be provided to protect the Officer's body and clothing. Failure to comply with this provision will entitle the Officer to replace any item of clothing rendered unusable at Company expense upon submission of proper vouchers after having demonstrated proof of loss to the Master.

5. Safe Operations. In all loading and discharging operations, the Chief Officer shall be afforded sufficient latitude in using vessel's personnel to conduct safe operations consistent with Company policy and practice.

6. Radioactive Materials. If, during the term of this Agreement, it is considered necessary to cover the handling of radioactive materials which may be classified as dangerous, the matter shall be referred to the Joint Safety Committee and after appropriate review, the subject will be negotiated and any settlement reached will be included as part of this Section.

7. Replenishment Operations at Sea. When cargo, bunkers, personnel or stores are transferred between a contract vessel and a public vessel or any other vessel designated under the terms of a contract or charter between the Company and a Governmental Agency, either directly or via helicopter, the terms and conditions shall be subject to special negotiations.

SECTION XXIII. CARGO ACTIVITY—*TANKERS*

Part of the duties of Licensed Deck Officers employed under this Agreement are the supervision of cargo activity to ensure the safe handling, stowage and carriage of cargoes. No additional compensation shall be due any Licensed Deck Officer during his regular duty hours except as may be described in this Agreement.

It is understood that during all cargo activity, a minimum of a full deck watch shall be on duty. In addition, a pumpman shall be on duty as circumstances require.

When required to perform duties of a non-supervisory nature or other cargo-related duties as may be described in this Section, a Licensed Deck Officer shall receive, in addition to any other compensation payable, the penalty rate as described below. Proper log entries shall be made which adequately explain the circumstances requiring the performance of this work to support payments due.

1. Longshoremen Unavailable. When longshoremen are unavailable, and the Licensed Deck Officer is required to actively supervise crew members engaged in cargo activity, he shall be compensated at the penalty rate provided the sailors are receiving the cargo rate of pay. Additional compensation shall not be payable when crew members add to existing lashing or shoring, either in port or at sea, or remove lashings prior to docking. (This shall only apply to tankships in the Dry Cargo trade and/or carrying containers or removable piggyback tanks.)

2. Unlicensed Personnel Work. In the event a Licensed Deck Officer is required to do any of the work commonly assigned to unlicensed personnel connected with cargo activity, the penalty rate shall be payable. Proper log entries shall be made which adequately explain the circumstances requiring the performance of this work to support payments due.

3. Dry Cargo or Containers. When tankers carrying containers, removable piggyback tanks or dry cargo are engaged in the loading or discharging of this type of cargo, an additional Licensed Deck Officer will be on duty to supervise these operations when liquid cargo or tank-cleaning operations are also being conducted.

4. Cleaning of Cargo Compartments

a. Tank Cleaning. Supervision of tank cleaning of any nature shall continue to be part of the regular duties of Licensed Deck Officers. No additional compensation shall be payable during regular duty hours unless the Officer is required to handle equipment or run pumps or other unlicensed personnel work, in which case the penalty rate shall be payable.

b. Extremely Dirty Spaces. When required to enter extremely dirty spaces which contain substances of a dirty or noxious nature, in a supervisory and/or inspection capacity, where it is impossible to avoid direct contact with such substances, the penalty rate shall be paid.

c. Tank-Cleaning Equipment. Tank cleaning of any nature shall require the use of explosive meters, oxygen indicators or chemical meters, as appropriate. All equipment used in tank cleaning shall, where possible, be bonded. This shall include, but not be limited to, butterworth and pyrate machines, washdown hoses, portable pumps, blowers and the like.

d. Safety Equipment and Protective Clothing

1. U.S. Coast Guard-approved type safety equipment for the particular cargo carried shall be provided to

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protect the Officer's health and safety. Failure to comply with this provision will entitle the Officer to lawfully refuse to participate in the handling of such cargoes.

ii. Clean coveralls, rubber boots and gloves shall be provided to protect the Officer's body and clothing. Failure to comply with this provision will entitle the Officer to replace any item of clothing rendered unusable at Company expense upon submission of proper vouchers after having demonstrated proof of loss to the Master.

5. Safe Operations. In all loading and discharging operations, the Chief Officer shall be afforded sufficient latitude in using Officers or crew members to conduct safe operations, consistent with Company policy and practice.

6. Radioactive Materials. If, during the term of this Agreement, it is considered necessary to cover the handling of radio-active materials which may be classified as dangerous, the matter shall be referred to the Joint Safety Committee and after appropriate review, the subject will be negotiated and any settlement reached will be included as part of this Section.

7. Transfers between Ships at Sea on Tankers. When fuel and/or cargo, personnel or stores are transferred from one vessel to another while at sea, the following minimum conditions and rates of pay shall apply:

i. not less than four (4) Licensed Deck Officers shall assist the Master in the transfer;

ii. the Master and other Licensed Deck Officers shall be on duty thirty (30) minutes before the time the transfer operation is to commence, and shall remain on duty until the operation is completed and the vessels are clear and equipment secured;

iii. during the entire operation, the Master and two Licensed Deck Officers on watch shall remain on the bridge unless required elsewhere;

iv. the Chief Officer shall be on deck in charge of the actual transfer operation;

v. One other Licensed Deck Officer shall assist the Chief Officer on deck. Suitable firefighting and communication equipment shall be available for instant use. During these periods, overtime shall be paid to all Licensed Deck Officers who are engaged in the transfer operations including the regular watchstanding Officers or Officers on duty. The Masters of the vessels involved in the transferring operation shall receive wage-related overtime for the period as outlined above.

b. For each eight (8) hours earned while the above-mentioned operation is in effect, the Master, shall have the option to accrue one (1) extra day of vacation, which shall be a covered day of employment. If the Master elects to receive the compensation in cash, payment shall be made through the Vacation Plan when he submits the appropriate vouchers.

SECTION XXIV. EXPLOSIVES/PENALTY CARGO —DRY CARGO

a. On vessels carrying fifty (50) short tons or more of "explosives," as permitted by law, the Company agrees to pay the Licensed Deck Officers, in addition to their regular monthly wages, ten (10%) percent of said wages per month while such cargo is on board the vessel or is being loaded or discharged.

b. Port Relief Officers who are employed on vessels carrying explosives fifty (50) short tons or over, as defined in this Section, shall be paid an additional ten (10%) percent of their hourly wage while such cargo is on board or is being loaded or discharged.

When fifty (50) short tons of explosives are carried, the ten (10%) percent bonus provided above shall be paid from the commencement of loading of explosives until the time the explosives are completely discharged.

c. The term "explosives" as used in this Section is defined to mean Class A or dangerous explosives according to the Interstate Commerce Commission classification but for no other. The Class A Dangerous explosives are, as follows:

1. Ammunition for cannon 37mm (1½") caliber or over;
2. Ammunition for cannon with explosive projectiles;
3. Projectiles, grenades, bombs, mines and torpedoes;
4. Ammunition with explosive bullets;
5. Ammunition with explosive chemicals;
6. Black powder and low explosives;
7. High explosives such as dynamite;
8. Initiating or priming explosives such as blasting caps;
9. Nuclear explosives.

The above shall not apply to ship's ammunition or signaling devices carried for the protection of the ship.

d. When sulphur in an amount of twenty-five (25%) percent or more of the deadweight carrying capacity is carried on a vessel, each Licensed Deck Officer shall be paid extra compensation of ten ($10.00) dollars per voyage.

e. The Joint Safety Committee shall schedule meetings to review hazardous cargoes as described in the relevant publication of the Intergovernmental Maritime Consultative Organization (IMCO) to ensure that all required information relating to proper stowage, carriage and handling is readily available to Licensed Deck Officers involved in the transport of such cargoes. In the event of a casualty resulting from carriage of an explosive cargo not described in subsection (c) above, the Parties will meet promptly to review the inclusion of such cargo in (c) above, and failing resolution shall refer the problem to the contract Arbitrator for resolution.

SECTION XXIV. EXPLOSIVES AND TOXIC CARGOES—*TANKERS*

The Company shall forward information on the proper stowage, carriage, and handling of hazardous cargoes to those vessels where Licensed Deck Officers are involved in the transport of such cargoes. Copies of such information will be forwarded to the Organization and the Maritime Institute of Technology and Graduate Studies.

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SECTION XXV. EMERGENCIES

1. a. Members of the Licensed Deck Department shall perform the necessary and customary duties of that department. Any work necessary for the safety of the vessel, passengers, crew or cargo, or for the saving of other vessels in jeopardy and the lives therein, shall be performed at any time, and such work shall not be considered overtime. Emergency will be deemed to exist when all hands are summoned by the prescribed emergency signals and shall continue until all hands are officially dismissed.

b. In the event all hands are not called out in an emergency, all Licensed Deck Officers off watch shall be paid overtime for any work performed and in accordance with the applicable overtime sections of the Agreement.

c. No provision in this Section shall preclude any salvage claims the Licensed Deck Officers might otherwise be entitled to under maritime law.

SECTION XXVI. MAINTENANCE AND CURE— UNEARNED WAGES

1. Licensed Deck Officers who are entitled to maintenance under the general maritime law doctrine of wages, maintenance and cure, on account of injury or illness incurred in the service of the ship, shall be paid maintenance at the rate of eight ($8.00) dollars per day to be paid weekly.

2. Wages, maintenance and cure under such doctrine will not be withheld in any case merely because the claimant has also submitted a claim for damages or has filed suit therefor, or is taking steps to that end.

3. In the event a Licensed Deck Officer must leave his vessel in any port because of illness or injury incurred in the service of the vessel, and under circumstances which would entitle him to maintenance and cure payments, he shall promptly receive a full statement of his account, showing the wages due him, including approximate overtime and bonus payments. Further, he shall receive eight ($8.00) dollars per day maintenance and cure commencing with the time of his discharge from a hospital, even if such discharge is for transfer to another hospital for the period of time he is on outpatient status. This eight ($8.00) dollars per day maintenance and cure shall be paid weekly by the vessel's agent in whatever port the Licensed Deck Officer happens to be. An advance against unearned wages shall also be paid weekly in an amount equal to ninety (90%) percent of the net weekly wages.

4. During the period referred to in the preceding paragraph, when a Licensed Deck Officer in a foreign port is awaiting return transportation, the eight ($8.00) dollars per day shall be paid at least weekly by the Company to cover the expense of lodging and subsistence, provided the U. S. Consul does not simultaneously advance money for the same purpose. However, if the Company is required to furnish lodging and subsistence because the eight ($8.00) dollar advance is not used by the Licensed Deck Officer for this purpose, the cost to the Company may be debited against wages earned or unearned, up to but not exceeding the sum of eight ($8.00) dollars per day. If the Licensed Deck Officer is unable to obtain lodging and subsistence for eight ($8.00) dollars, upon request, the Company will furnish the same, but not be obligated to pay the eight ($8.00) dollars in addition thereto.

5. If a Licensed Deck Officer is hospitalized, the Company will honor a letter signed by the Licensed Deck Officer, assigning to a beneficiary designated by him, in accordance with the regulations covering allotments, all or a specified portion of unearned wages due said Licensed Deck Officer.

6. The payment of Maintenance and Cure or unearned wages when denied, may be taken up on its merits under the grievance procedure of the Agreement providing a reasonable period of time has been allowed to the Company to ascertain the facts involved and no such issue may be submitted to arbitration unless the individual Licensed Deck Officer involved agrees that the Arbitration Award shall act as a complete and final substitute of any claim for maintenance and cure or unearned wages.

7. The sole fact that a Licensed Deck Officer has made a claim for maintenance and cure, unearned wages, or for damages resulting from illness or injury, shall not constitute just cause for discharge or denial of reinstatement, or rejection for employment.

8. The Master shall be entitled to maintenance and cure benefits and unearned wages in the same manner as any other Licensed Deck Officer.

9. The use of medical services or facilities by a Licensed Deck Officer, including the Master, other than those provided by the United States Public Health Service, shall not constitute a bar to the payment of maintenance and cure, or unearned wages. The Company shall retain the right to have the Officer who is receiving unearned wages or maintenance and cure payments examined by the U. S. Public Health Services, closest to his home, or an independent medical facility designated by the Welfare Plan, in the city where the Officer resides provided that all normal expenses incurred by this option shall be borne by the Company.

SECTION XXVII. HOLIDAYS

1. Holidays. The following shall be recognized as holidays:

New Year's Day
Lincoln's Birthday
Washington's Birthday
Memorial Day
Independence Day
Labor Day
Veterans' Day
Thanksgiving Day
Christmas Day

Where, by reason of national legislation, a holiday provided under this contract is celebrated on a day other than the date on which it would otherwise fall, such day provided by national legislation shall be recognized as the holiday under this contract. Holidays already changed by national legislation are as follows:

Lincoln's Birthday; Washington's Birthday;
Memorial Day; Veterans' Day.

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2. Holiday Work. The overtime rate of pay shall be paid Licensed Deck Officers who perform work on any of the nine (9) holidays described above, and any of such holidays falling on Saturdays, or Sundays, shall be observed on the following Monday. No double overtime shall be paid for work performed attributable to holidays falling on Saturdays or Sundays.

3. Voting Time. When a vessel is in a U. S. port on any general Election Day, Licensed Deck Officers who are qualified registered voters shall be afforded two (2) hours to vote.

4. Local Holidays. When in ports of the United States, the Licensed Deck Officers shall be granted any additional holidays granted by the Company to the longshoremen in such ports. This shall not be applicable to tankers except when engaged in the grain, dry bulk or dry cargo trade.

SECTION XXVIII. VACATIONS

1. a. The Agreement and Declaration of Trust establishing the MM&P Vacation Plan, MM&P Tanker Vacation Plan and MM&P-PMA Vacation Plan, each is hereby extended through June 15, 1976. The Company agrees to contribute at a rate sufficient to meet the cost of vacation benefits earned, administrative costs and taxes, if any, applicable to such benefits.

b. It is the intention of the parties that the MM&P-PMA Vacation Plan shall be merged with the MM&P Vacation Plan, which will be the surviving program to provide benefits for service on and after June 16, 1972. It is further agreed that the parties will establish a committee to decide the conditions and timing of a further merging of the MM&P Tanker Vacation Plan with the MM&P Vacation Plan.

c. For all covered employment on and after June 16, 1972, the vacation benefit under the MM&P Vacation Plans shall be eleven (11) days for each thirty (30) days of said employment aboard dry cargo and passenger vessels and sixteen (16) days for each thirty (30) days of said employment aboard tanker vessels; except as provided in (d) and (e) below.

d. Each Licensed Deck Officer, including the Master, employed on a vessel which is designed primarily as a container carrier, barge carrier, automobile carrier, roll-on, roll-off or OBO vessel, shall receive fifteen (15) days' vacation for each thirty (30) days of employment on said vessels.

e. In addition to the benefits provided above, each Master shall be entitled to vacation benefits equal to five (5) days for each thirty (30) days of employment.

f. Any Licensed Deck Officer who fails to take his vacation and days off as required under the provisions of Section II and this Section XXVIII, shall be denied all vacation credits and benefits for the period of unauthorized employment. The monies so withheld shall be deposited in an MM&P Special Welfare Fund.

g. No Licensed Deck Officer shall be re-employed prior to the expiration of his vacation period and additional days off without the express written consent of the Organization.

h. The amount of vacation benefits shall be prorated in accordance with the average base rate of pay (which shall include non-watch allowance) received by the Employee in the period used for computing eligibility. It shall also be prorated in accordance with the vacation schedule(s) applicable to the vessel(s) upon which he was employed. (This shall not be applicable to Port Relief Officers employed on a monthly basis.)

i. Licensed Deck Officers applying for vacation benefits shall apply for benefits on all employment at time of filing. A Licensed Deck Officer's failure to apply on all such employment shall cause him to lose vacation benefits on such period, the amount of which shall be deposited in an MM&P Special Welfare Fund.

2. Notwithstanding the provisions set forth in Section II of this Agreement, the parties agree that the number of days of time off without pay in each contract year as required by Section II may, at the discretion of the Organization, be reduced to such number as the Organization may determine. Any such reduction shall remain in effect for such period of time as the Organization, in its discretion, may determine. The Trustees of the Vacation Plan shall make such rules as may be required to place into effect this provision of the contract. The purpose of any such adjustments shall be to meet the impact of unemployment for the distribution of available employment in an equitable manner.

3. At the commencement of a voyage or at the commencement of a pay period, a Licensed Deck Officer who is part of the complement of a vessel shall have the option to waive overtime payments during said voyage or pay period and, in lieu thereof, accrue additional days of vacation. Such days of vacation shall correspond to the amount which he would have earned as overtime divided by the daily vacation benefit of the Employee, plus the Company's daily pension contribution for said vacation day. Said additional vacation shall be taken by the Employee immediately following a vacation period.

(The parties shall meet to establish procedures for the implementation of this provision, and the circumstances under which it can be exercised.)

4. a. The Company agrees not to employ any Licensed Deck Officer who is receiving vacation benefits under this Section. This is not intended to prevent a Company from utilizing the expertise or service of an Officer as a witness or representative of the Company in litigation or hearings. In this latter circumstance, the required vacation days will be extended for the period the Officer is needed.

b. In the event a Licensed Deck Officer is required to serve as a Port Relief Officer to meet the manning requirements while receiving vacation benefits, his return-to-work date from vacation shall be extended one day for each eight (8) hours' employment.

5. a. The Parties agree that the MM&P Vacation Plans shall make the necessary arrangements to provide facilities in the Organization's Hiring Halls in the ports designated by the Organization for the payment of monies due to night, weekend, and holiday Port Relief Officers, and Port Relief Officers employed on a monthly basis.

b. Employment as a Port Relief Officer shall not be deemed employment for the purpose of computing vacation benefits. It is understood that an amount equal to said vacation benefit has been included in the hourly rate for such employment.

c. The Parties agree that contributions by the Company to the MM&P Pension and Welfare Plans and credits for such employment by Port Relief Officers shall continue on the same basis as under the previous collective bargaining Agreement (which has been extended herein).

6. Vacation days as applicable provided under this Agreement shall be paid through the Vacation Plan.

7. The Company agrees that Union dues, initiation fees and assessments may be deducted by the Administrator of the MM&P Vacation Plans from each vacation benefit payment received by members of the Organization, in such amounts as may be due under the Organization's Constitution, for each member who executes a written authorization permitting such deduction to be made. The sums deducted will be remitted to the Secretary-Treasurer of the Organization. The Organization will provide the necessary authorization forms and deliver the signed forms to the Administrator of the MM&P Vacation Plan.

8. Notwithstanding any other provision in the Agreement, it shall be a condition of employment, and/or registration for employment, that all Employees and prospective Employees covered in this Agreement who are not members of the Union, shall be required to pay a service fee of $75.00 or such other amount as may hereafter be agreed upon, at the time of registration and no more frequently than on a calendar quarterly basis thereafter, payable in advance, plus a service fee of 6% of the gross amount of each vacation benefit received for work performed on MM&P contract vessels on or after June 16, 1972, in addition to the $75.00 or other quarterly fee, in consideration of the services performed by the Organization, including the negotiation and enforcement of collective bargaining agreements, the maintenance of employment offices, and other Organization activities performed for the general interest of all Employees in the bargaining unit. The failure to pay such quarterly service fees shall be sufficient ground for removal from the Organization assignment list and shall nullify any prior assignment therefrom. The Administrator shall deduct from the vacation benefits of non-Organization Employees and pay to the Secretary-Treasurer of the Organization amounts equal to the service fees required to be paid by such non-Organization Employees pursuant to this Section. The sums deducted will be remitted to the Secretary-Treasurer of the Organization. The Organization will provide the necessary authorization forms and deliver the signed forms to the Administrator of the MM&P Vacation Plans.

The Organization agrees to indemnify and hold harmless the Employers or Companies from any and all liabilities which they or the MM&P Vacation Plans may have as a result of dues paid to the Organization from the vacation pay of Licensed Deck Officers.

SECTION XXIX. PENSION AND WELFARE PLANS

A. WELFARE (ALL CONTRACT COMPANIES (EXCEPT PMA)

1. The documents establishing and constituting the MMP Pension and Welfare Plan (herein Welfare Plan), as amended, are extended through and including June 15, 1976.

The Companies agree to contribute to the MMP Welfare Plan in accordance with the provisions of the Plan, as amended, and the Companies also agree to guarantee the benefits which are provided by the Plan, and will pay any additional contributions necessary to provide such guaranteed benefits.

2. a. The funds set aside in the newly-created MMP Special Welfare Fund are subject to allocation by the Organization and shall remain separate and apart from other funds in the MMP Welfare Plan until disposed of according to the decision of the Organization.

b. Separate and apart from 2 (a) above, the Companies agree to make the necessary contribution to the MMP Welfare Plan to meet the cost of the benefits, the administrative costs and to maintain such reserves as may be necessary under applicable law and maintain the Plan on a sound actuarial basis.

3. Effective January 1, 1973, the Trustees of the Plan(s) shall make the following changes in the program of benefits:

a. All dental allowances shall be increased fifty (50%) percent and allowance for orthodontic work shall be added at a reasonable level.

b. (1) Under the conditions set forth in this paragraph, pensioners and their dependents, as defined in the Welfare Plan, shall be entitled to those benefits enumerated in paragraph (b) (2) below. These conditions are (i) the pensioner must be less than sixty-five (65) years of age and not entitled to Medicare benefits, and **(ii)** the pensioner must not be gainfully employed and receiving compensation above the minimum allowed under Social Security, and **(iii)** the pensioner's dependent spouse or other dependents must not be gainfully employed and receiving compensation above the minimum allowed under Social Security, and **(iv)** the dependent spouse is not entitled to Medicare, and **(v)** the dependent child was born prior to the effective date of the pension, and in the case of a step-child or adopted child, such relationship must have existed at the effective date of the pension.

(2) Those pensioners and their dependents who meet the conditions set forth in paragraph (b) (1) above, shall be entitled to the following benefits as more fully described in the basic Plan for active Employees:

Medical Expense Benefits
Hospitalization Benefits
Surgical Benefits
Medical Expense Benefits
  (Doctor Visits)
Laboratory and
  X-ray Benefits
Polio Benefits
Cancer Benefits
Major Medical to
  $5,000.00—lifetime
Excluded Illnesses
Mental Illness
Optical Benefits

c. Each Licensed Deck Officer shall receive credit for eligibility purposes at the rate of one (1) day for each day he is on the Company's payroll.

d. Extended death benefits shall only be paid to immediate family of a deceased Employee.

e. The Trustees of the MM&P Welfare Plan are directed to make the necessary amendments to the Welfare Plan documents so that, effective June 16, 1973, the eligibility requirements and benefits provided for under the MM&P Welfare Plan are the same as the eligibility requirements and benefits provided for under the MMP-PMA Welfare Plan.

A. WELFARE (PMA ONLY)

1. The documents establishing and constituting the MMP-PMA Welfare Plan, including the First Amended MMP-PMA Welfare Plan Agreement dated the first day of January, 1959, as amended, are extended through and including June 15, 1976.

The Companies agree to contribute to the MMP-PMA Welfare Plan, in accordance with the provisions of the Plan, as amended, and except for those benefits which are paid for out of the MMP Special Welfare Fund, the Companies agree to guarantee the benefits which are provided by the Plan, and will pay any additional contributions necessary to provide such guaranteed benefits.

2. a. The funds set aside in the MMP Special Welfare Fund are subject to allocation by the Organization and shall remain separate and apart from other funds in the MMP-PMA Welfare Plan until disposed of according to the decision of the Organization.

b. Separate and apart from 2 (a) above, the Companies agree to make the necessary contribution to the MMP-PMA Welfare Plan to meet the cost of the benefits, the administrative costs and to maintain such reserves as may be necessary under applicable law and maintain the Plan on a sound actuarial basis.

3. Effective January 1, 1973, the Trustees of the Plan(s) shall make the following changes in the program of benefits:

a. All dental allowances shall be increased fifty (50%) percent and allowance for orthodontic work shall be added at a reasonable level.

b. (1) Under the conditions set forth in this paragraph, pensioners and their dependents shall be entitled to those benefits enumerated in paragraph (b) (2) below. These conditions are **(i)** the pensioner must be less than sixty-five (65) years of age and not entitled to Medicare benefits, and **(ii)** the pensioner must not be gainfully employed and receiving compensation above the minimum allowed under Social Security, and **(iii)** the pensioner's dependent spouse or other dependents must not be gainfully employed and receiving compensation above the minimum allowed under Social Security, and **(iv)** the dependent spouse is not entitled to Medicare, and **(v)** the dependent child was born prior to the effective date of the pension, and in the case of a step-child or adopted child, such relationship must have existed at the effective date of the pension.

(2) Those pensioners and their dependents who meet the conditions set forth in paragraph (b) (1) above, shall be entitled to the following benefits as more fully described in the basic Plan for active Employees:

Medical Expense Benefits
Hospitalization Benefits
Surgical Benefits
Medical Expense Benefits
  (Doctor Visits)
Laboratory and
  X-ray Benefits

Polio Benefits
Cancer Benefits
Major Medical to
  $5,000.00—lifetime
Excluded Illnesses
Mental Illness
Optical Benefits

c. Each Licensed Deck Officer shall receive credit for eligibility purposes at the rate of one (1) day for each day he is on the Company's payroll.

d. Extended death benefits shall only be paid to immediate family of a deceased Employee.

e. At the end of each fiscal year, the Trustees will ascertain the cost and/or savings of the benefit changes in (a), (b) and (d) above. If there is a net cost, the cost shall be paid out of the MMP Special Welfare Fund. If there is a net savings, the amount of the savings shall be transferred to the MMP Special Welfare Fund.

B. PENSIONS (ALL CONTRACT COMPANIES EXCEPT PMA)

1. The Employers shall continue to contribute to provide pensions to Licensed Deck Officers in accordance with the MMP Pension Plan, as amended.

2. The Parties agree to continue in force and in effect to and including June 15, 1976, the Pension Plan and its Trust indenture and other Plan documents, established by the Parties, conditional upon continued approval by the Internal Revenue Service on the subject of Federal Income Tax deduction only.

3. The benefits and eligibility rules of the MMP Pension Plan in effect under the Agreement as of June 15, 1972 and as further amended in accordance with the provisions of this Agreement and specifically subject to the provisions of subparagraph 4 herein below with respect to the MMP Pension Plan, shall continue in effect.

4. Each Company agrees with respect to the MMP Pension Fund:

a. For each of the contract years there shall be contributed to the MMP Pension Plan a minimum amount to be measured by the rate of contribution to the Pension Plan as has been determined by the Trustees of the Pension Plan to be in effect as of June 16, 1969, on which contributions were made to the Pension Plan by the Contributing Employers within the fiscal years ending January 31, 1966, 1967 and 1968. The actuary to the Pension Plan shall determine semi-annually the number of man days on which contributions have in fact been made for the preceding period and the rate of contribution shall be increased by the Trustees if necessary to assure receipt by the Pension Plan for each contract year of the annual minimum income in accordance with the foregoing obligation. The Trustees in their discretion may extend such period of a contract year to eighteen (18) months. Any surplus in the Pension Fund generated as a result of this provision may not be applied for improvements in existing benefits eligibility rules or the

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establishment of new benefits under the Pension Plan. "Surplus" as used herein shall be deemed to be the amount received by the Pension Fund in excess of that required to meet the cost of current credits, interest on unfunded liability, administrative costs and amortization of the past service liability under the 15-25 year funding agreement between the Parties hereto which is part of the Agreement.

b. In the event the Actuary to the Pension Plan ascertains as part of his periodic reviews that the number of man days for which contributions have in fact been made for the preceding period is greater than the pro rata number of days for the same period of time under the annual three (3) year average as provided above, and so reports to the Trustees, the rate of contribution shall be changed by action of the Trustees within the following requirements: The assured annual income to be received by the Pension Plan must not be:

i. less than the minimum guarantee provided for in 4(a) above, nor,

ii. less than an amount equal to the cost of current credits, interest on unfunded liability, administrative costs and for funding as covered in the 1967 15-25 year funding agreement between the Parties hereto, and which continues in full force and effect.

c. Nothing provided for in subparagraphs 4(a) and 4(b) above shall be construed as modifying or changing in any way, the obligations of the Employers under the Agreement to make such additional contributions as may be necessary to fund the Plan in accordance with the funding provisions of the Agreement.

d. There shall be no unilateral change of any contribution rate which has been agreed upon by the Trustees of the Pension Fund.

e. Any monies hereafter received in the MMP Pension Plan which may be designated as part of a Special Pension Fund or which may hereafter be received by the Pension Fund for allocation to a Special Pension Fund shall not be included for any purpose in the computation made under subparagraph 4(a), 4(b), or 4(c) above. Any such Special Pension Fund shall be used exclusively and solely for such legal purposes as may be determined by the Organization.

5. Effective as of June 16, 1969, the Employers shall increase their rate of contribution to the MMP Pension Plan by an amount, over and above that which they are presently obligated to contribute under the outstanding collective bargaining agreement, (which present obligation is not intended to be modified or changed in any manner by virtue of this paragraph) equal to what the Actuary of the Fund shall determine to be necessary to fund on a twenty-five 25) year basis from June 16, 1967, all accrued liability for all prior service for the program of pension benefits under the MMP Pension Plan which has already been approved by the Trustees of the Fund.

Such increase in contribution shall be allocated only for said purpose. In such computation the funding of the Fund shall not be deemed to include contributions made by Employers in connection with positions on vessels within the applicable contractually required manning scale but not filled by regular Licensed Deck Officers.

With respect to any Company whose fleet at any one time (vessels owned by the Company) averages more than twenty (20) years (from date of construction or major reconversion) the foregoing additional contributions while such condition obtains shall be based on a funding within fifteen (15) years.

The Actuary to the Fund shall make an annual report to the Trustees certifying as to the appropriate rate to accomplish this objective.

6. The MMP Pension Plan shall be amended in the following respects:

a. A new pension benefit shall be established after thirty (30) years of credit amounting to $470 per month or 60% of pay, whichever is higher. In order to be eligible for the thirty-year pension, an Employee must accrue two years of credit subsequent to June 15, 1972.

b. Effective January 1, 1973, a Licensed Deck Officer shall be given a year's pension credit for each calendar year in which he is employed prior to reaching age 65 for at least 280 days in Covered Employment. If, in a calendar year he was employed, prior to reaching age 65, for less than 280 days in Covered Employment, he shall receive pension credits in quarter-year units, as follows:

Days of Covered Employment in the Calendar Year	Quarte to be Cred
Less than 70	none
70 to 139	1
140 to 209	2
210 to 279	3
280 and over	4

B. PENSIONS (PMA ONLY)

1. The Employers shall continue to contribute to provide pensions to Licensed Deck Officers in accordance with the First Amended MMP-PMA Pension Agreement dated 25th day of June 1959, as amended through September 30, 1970.

2. The Parties agree to continue in force and in effect to and including June 15, 1976, the Pension Plan and its Trust indenture and other Plan documents, established by the Parties, conditional upon continued approval by the Internal Revenue Service on the subject of Federal Income Tax deduction only.

3. The benefits and eligibility rules of the MMP-PMA Pension Plan in effect under the Agreement as of June 15, 1972 and as further amended in accordance with the provisions of this Agreement and specifically subject to the provisions of subparagraph 4 herein below with respect to the MMP-PMA Pension Fund, shall continue in effect.

4. Each Company agrees with respect to the MMP-PMA Pension Fund:

a. For each of the contract years there shall be contributed to the MMP-PMA Pension Fund a minimum amount to be measured by the rate of contribution to the Pension Fund as has been determined by the Trustees of the Pension Plan to be in effect as of June 16, 1969 (for the purposes of this paragraph only, that rate shall be $14.30) multiplied by the annual average of 243,000 man-days (for PMA) on which contributions were made to the Pension Fund by the Contributing Employers within the fiscal years ending January 31, 1966, 1967 and 1968. The actuary to the Pension Plan shall determine semi-annually the number of man days on which contributions have in fact been made for the preceding period and the rate of contribution shall be increased by the Trustees if necessary to assure receipt by the Pension Plan for each contract year of the annual minimum income in accordance with the foregoing obligation. The Trustees in their discretion may extend such period of a contract year to eighteen (18) months. Any surplus in the Pension Fund generated as a result of this provision may not be applied for improvements in existing benefits, eligibility rules or the establishment of new benefits under the Pension Plan. "Surplus" as used herein shall be deemed to be the amount received by the Pension Fund in excess of that required to meet the cost of current credits, interest on unfunded liability, administrative costs and amortization of the past service liability under the 15-25 year funding agreement between the Parties hereto which is part of the Agreement.

b. In the event the Actuary to the Pension Plan ascertains as part of his periodic reviews that the number of man days for which contributions have in fact been made for the preceding period is greater than the pro rata number of days for the same period of time under the annual three (3) year average as provided above, and so reports to the Trustees, the rate of contribution shall be changed by action of the Trustees within the following requirements: The assured annual income to be received by the Pension Plan must not be:

i. less than the minimum guarantee provided for in 4(a) above, nor,

ii. less than an amount equal to the cost of current credits, interest on unfunded liability, administrative costs and for funding as covered in the 15-25 year funding agreement between the Parties hereto which is part of the 1969 collective bargaining Agreement between the Parties, and which continues in full force and effect.

c. Nothing provided for in subparagraphs 4(a) and 4(b) above shall be construed as modifying or changing in any way, the obligations of the Employers under the Agreement to make such additional contributions as may be necessary to fund the Plan in accordance with the funding provisions of the Agreement.

d. There shall be no unilateral change of any contribution rate which has been agreed upon by the Trustees of the Pension Fund.

e. Any monies hereafter received in the MMP-PMA Pension Fund which may be designated as part of a Special Pension Fund or which may hereafter be received by the Pension Fund for allocation to a Special Pension Fund shall not be included for any purpose in the computation made under subparagraphs 4(a), 4(b), or 4(c) above. Any such Special Pension Fund shall be used exclusively and solely for such legal purposes as may be determined by the Organization.

5. Effective as of June 16, 1969, the Employers shall increase their rate of contribution to the MMP-PMA Pension Fund by an amount, over and above that which they are presently obligated to contribute under the outstanding collective bargaining agreements (which present obligation is not intended to be modified or changed in any manner by virtue of this paragraph) equal to what the Actuary of the Fund shall determine to be necessary to fund on a twenty-five (25) year basis from June 16, 1969, all accrued liability for all prior service for the program of pension benefits under the MMP-PMA Pension Fund which has already been approved by the Trustees of the Fund.

Such increase in contribution shall be allocated only for said purpose. In such computation the funding of the Fund shall not be deemed to include contributions made by Employers in connection with positions on vessels within the applicable contractually required manning scale but not filled by regular Licensed Deck Officers.

With respect to any Company whose fleet at any one time (vessels owned by the Company) averages more than twenty (20) years (from date of construction or major reconversion) the foregoing additional contributions while such condition obtains shall be based on a funding within fifteen (15) years.

The Actuary to the Fund shall make an annual report to the Trustees certifying as to the appropriate rate to accomplish this objective.

6. The MMP-PMA Pension Plan Agreement shall be amended in the following respects:

a. A new pension benefit shall be established after thirty (30) years of credit amounting to $470 per month or 60% of pay, whichever is higher. In order to be eligible for the thirty-year pension, an Employee must accrue two years of credit subsequent to June 15, 1972.

b. Effective January 1, 1973, a Licensed Deck Officer shall be given a year's pension credit for each calendar year in which he is employed prior to reaching age 65 for at least 280 days in Covered Employment. If, in a calendar year he was employed, prior to reaching age 65, for less than 280 days in Covered Employment, he shall receive pension credits in quarter-year units, as follows:

Days of Covered Employment in the Calendar Year	Quarters to be Credited
Less than 70	none
70 to 139	1
140 to 209	2
210 to 279	3
280 and over	4

c. The Parties agree that for the fiscal year February 1, 1973 through January 31, 1974, the daily contribution rate shall be $21.57.

The Parties agree that the Pension Plan shall have co-actuaries, one designated by the Company Trustees and one by the Union Trustees. The co-actuaries will have equal access to data required to prepare Annual Evaluation Reports or to carry out the usual and customary functions of an actuary. Each of the co-actuaries will prepare an Evaluation Report for the fiscal year ending January 31,

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1972 certifying the adequacy of the $21.57 rate which is to be effective February 1, 1973.

Each of the co-actuaries will prepare an Annual Evaluation Report for the fiscal year ending January 31, 1973, and recommend a daily contribution rate for the fiscal year commencing February 1, 1974. Either party shall have the right to reject the daily contribution rate recommended by one or both of the co-actuaries, and shall then have the right to submit to arbitration the issue of the proper daily contribution rate for such fiscal year.

The same procedures as described in the above paragraph shall also be followed in determining the proper daily contribution rate for each succeeding fiscal year.

C. GENERAL PENSION AND WELFARE CONDITION (ALL CONTRACT COMPANIES EXCEPT PMA)

1. The Trustees of each of the MMP Plans are authorized if they so decide, provided a majority of the Employer Trustees agree, to require a bond or other security to be posted by any Company which in the judgment of the Trustees, is required to ensure full payment of all compensation to their covered Employees and their required contributions to said Plans as provided for in the collective bargaining agreement.

2. A "Contributing Employer," "Covered Employees," and "Covered Employment" under the MMP Pension and Welfare Plans, may include, as determined by the Trustees in accordance with the Rules and Regulations promulgated thereunder but subject to the requirements of, and to the extent permitted by, applicable law: **(a)** Employers who are obligated by collective bargaining agreement to make the necessary contributions to the Plans in behalf of covered Employees; **(b)** covered Employees in whose behalf an Employer has been obligated to make contributions which may embrace pensioners who had, prior to retirement, been in covered employment; **(c)** the MMP Pension, Welfare and other Plans which are hereby authorized to make the required contributions as contributing Employers, in behalf of their respective Employees, on such basis as may be determined by the Trustees; **(d)** the International Organization of Masters, Mates and Pilots, and subordinate bodies of the Organization, which are hereby authorized to make the required contributions as contributing Employers, in behalf of their respective Officials, Employees and Representatives, on such basis as may be determined by the Trustees, and **(e)** covered employment shall mean employment for which an Employer is obligated to contribute to any or all said Plans and for the purpose of eligibility shall include periods of time preceding the date when the Employer became so obligated as may be determined by the Trustees.

3. Effective for employment on and after January 1, 1973, or at such later date that may be agreed upon, the Companies' contributions to the MMP Pension Plan shall be converted from a dollar per man per day payment to a percentage of base rate payment with the understanding that the aggregate obligation of the Companies or the total contribution to the Plan will not be affected by the change to a percentage contribution. **The Parties shall meet to work out procedures for implementing this change.**

4. In the event of legislation affecting the MMP Pension Plan, the Companies agree to make such additional contributions as are actuarially deemed to be necessary to enable the Pension Plan to comply therewith.

5. Any sums payable to any Licensed Deck Officer under the provisions of this Agreement, which are not claimed by the Officer within six (6) years after the amount becomes payable shall be paid by the Employer to an MMP Special Welfare Fund.

6. In accordance with past practice, all incurred expenses of any Arbitration dispute, including counsel fees, shall be paid by the involved MMP Plans, and the various Plan documents shall be so amended.

7. The Parties agree to establish a Joint Committee for the purpose of determining the feasibility of a merger of the MMP-PMA Pension Plan and the MM&P Pension Plan.

8. The Trustees shall make whatever amendment may be necessary in the Pension Agreement and Regulations to permit the deduction by the Administrator of 3% of a pensioner's monthly payment to be paid over to the Organization's Pensioner's Action Fund, upon receipt by the Administrator of an authorization therefor executed by the pensioner.

9. Pensioners will be prohibited from working at any job in the maritime industry after a pension is awarded, except the Trustees may permit re-employment in shoreside positions covered by a collective bargaining agreement of the Organization.

10. The Fund shall provide the option of a survivor's pension (including "pop-up" option) to a surviving widow who has been married to the pensioner for at least five (5) years immediately prior to the date of his retirement. The survivor's pension shall be in an amount actuarially computed in accordance with existing benefit levels. The option must be exercised at least two years prior to the date of retirement.

C. GENERAL PENSION AND WELFARE CONDITIONS (PMA ONLY)

1. The Trustees of each of the MMP-PMA Funds are authorized if they so decide, provided a majority of the Employer Trustees agree, to require a bond or other security to be posted by any Company which in the judgment of the Trustees, is required to ensure full payment of all compensation to their covered Employees and their required contributions to said Plans as provided for in the collective bargaining agreement.

2. A "Contributing Employer," "Covered Employees," "Covered Employment" under the MMP-PMA Pension and Welfare Plans, may include, as determined by the Trustees in accordance with the Rules and Regulations promulgated thereunder but subject to the requirements of, and to the extent permitted by, applicable law: **(a)** Employers who are obligated by collective bargaining agreement to make the necessary contributions to the Plans in behalf of

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covered Employees; **(b)** covered Employees in whose behalf an Employer has been obligated to make contributions which may embrace pensioners who had, prior to retirement, been in covered employment; **(c)** the MMP-PMA Pension, Welfare and other Plans which are hereby authorized to make the required contributions as contributing Employers in behalf of their respective Employees, on such basis as may be determined by the Trustees; **(d)** the International Organization of Masters, Mates and Pilots, and subordinate bodies of the Organization, which are hereby authorized to make the required contributions as contributing Employers, in behalf of their respective Officials, Employees and Representatives, on such basis as may be determined by the Trustees, and **(e)** covered employment shall mean employment for which an Employer is obligated to contribute to any or all said Plans and for the purpose of eligibility shall include periods of time preceding the date when the Employer became so obligated as may be determined by the Trustees.

3. On or before January 1, 1973, the method of Company contributions to the Pension Fund shall be altered so as to conform to the Feinberg Principle, that such contributions shall be made for days of vacation as well as for days of employment with the understanding that the aggregate obligation of the Company or the total contribution to the Fund will not be affected by the change.

4. Effective for employment on and after January 1, 1973, or at such later date that may be agreed upon, the PMA member companies' contributions to the MMP-PMA Pension Fund shall be converted from a dollar per man per day payment to a percentage of base rate payment with the understanding that the aggregate obligation of the Companies or the total contribution to the Fund will not be affected by the change to a percentage contribution. **The Parties shall meet to work out procedures for implementing this change.**

5. In the event of legislation affecting the MMP-PMA Pension Plan, the PMA member Companies agree to make such additional contributions as are actuarially deemed to be necessary to enable the Pension Plan to comply therewith.

6. Any sums payable to any Licensed Deck Officer under the provisions of this Agreement, which are not claimed by the Officer within six (6) years after the amount becomes payable shall be paid by the Employer to the MMP-PMA Welfare Plan Special Fund.

7. In accordance with past practice, all incurred expenses of any Arbitration dispute, including counsel fees, shall be paid by the Pension Trust, and the Pension Agreement shall be so amended.

8. The Parties agree to establish a Joint Committee for the purpose of determining the feasibility of a merger of the MMP-PMA Pension Plan and the MM&P Pension Plan.

9. The Parties agree that the pension trust documents shall be amended to provide that Licensed Deck Officers who would be eligible for a Normal, Reduced, Early or Disability Pension under the Pension Plan rules as they existed before the Eighth Amendment to the First Amended Pension Plan may not be eligible under the Pension Plan as amended because they will not have a year of Credited Service after June 15, 1965. All such Licensed Deck Officers shall be eligible to receive a Pension if they would have been eligible for a Pension under the provisions of the Pension Plan as they read before the Eighth Amendment. The amount of their Pension shall be what they would have been entitled to receive under the old rules, increased as provided in Article III, Section 7 of the Pension Plan agreed as amended April 17, 1970.

10. The Trustees shall make whatever amendment may be necessary in the Pension Agreement and Regulations to permit the deduction by the Administrator of 3% of a pensioner's monthly payment to be paid over to the Organization's Pensioner's Action Fund, upon receipt by the Administrator of an authorization therefor executed by the pensioner.

11. Pensioners will be prohibited from working at any job in the maritime industry after a pension is awarded, except the Trustees may permit re-employment in shoreside positions covered by a collective bargaining agreement of the Organization.

12. The Fund shall provide the option of a survivor's pension (including "pop-up" option) to a surviving widow who has been married to the pensioner for at least five (5) years immediately prior to the date of his retirement. The survivor's pension shall be in an amount actuarially computed in accordance with existing benefit levels. The option must be exercised at least two years prior to the date of retirement.

SECTION XXX. TRAINING

1.The parties agree to continue the training program known as the Maritime Advancement, Training, Education and Safety (M.A.T.E.S.) Program and to extend the Agreement and Declaration of Trust to and through June 15, 1976. The Program is to be financed in this manner:

a. Each Company which is participating in the Program shall pay into the M.A.T.E.S. Fund an annual contribution of one thousand ($1,000.00) dollars for each vessel that is under contract with the Organization on each anniversary date of the contract.

b. Each Company shall pay into the M.A.T.E.S. Fund a daily contribution rate of $6.04 for each day worked for all covered Employees. (Ed. Note: The Pay Board has approved this $6.04 rate)

2. The Parties agree to discuss further implementation of the MM&P Apprentice Licensed Deck Officer Training Program.

SECTION XXXI. SEVERANCE PROGRAM

1. The parties agree that all of the terms and provisions of the Shipman Arbitration Award, dated July 9, 1959, which established the severance program, and all of the subsequent supplementary arbitration awards relating thereto, shall be deemed to be incorporated as part of the Agreement, subject to the changes hereafter set forth.

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2. The Company agrees that it must first make the necessary arrangements with the Organization for the escrow of such monies as may be due under the Shipman Award, in any case which falls within said Award, before it can make any transfer of a vessel out of American registry.

3. Any monies which may be due under the Shipman Award, as herein modified, shall be deemed to be wages and all legal actions available to collect wages shall be available to recover any such monies due.

4. When severance is payable, the monies due shall be paid to the MM&P Joint Employment Committee, and shall not be paid to individuals under any circumstances.

5. A calculation of severance pay, under the terms of the Shipman Award, shall be made with respect to each Licensed Deck Officer's position below the rank of Chief Officer on each of the Company's vessels as if the said vessel were transferred out of American registry on their last day of covered employment as a permanent Employee of the Company, and severance was payable. The said amount thus calculated shall be deemed to be a "vested" amount payable as severance whenever and if the vessel is ultimately transferred out of American registry.

SECTION XXXII. JOINT EMPLOYMENT COMMITTEE

The establishment of the Joint Employment Committee is hereby confirmed and the Company agrees to continue or to commence, as the case may be, its contributions to the said Committee as hereinafter described.

The monies so contributed shall be available for the sole and exclusive purpose of defraying the cost and expense of the operation and maintenance of the employment offices operated by the Organization, from which the Company obtains its Licensed Deck Officers in accordance with the provisions of this contract, and the cost of administration incurred by the Committee.

The Company agrees, effective June 16, 1972, to contribute fifteen (15c) cents per day per covered Employee for each day on payroll to the Joint Employment Committee.

The parties agree, and will do what is required of them, to merge the Joint Employment Referral Committee (PMA Agreement) with the Joint Employment Committee (A&G Agreements) and for the latter to be the surviving entity, and for the necessary transfer of funds from the former.

It is further agreed that the Company and the Organization will be adequately and fairly represented on the Joint Employment Committee.

SECTION XXXIII. LITIGATION PROTECTION CLAUSE

1. The Company agrees, on request, to provide at the Company's expense, the services of legal counsel to any Licensed Deck Officer, including the Master, who becomes involved as a party defendant in any civil litigation arising out of any claimed act or omission, not constituting willful misconduct by such Licensed Deck Officer, and to reimburse such Licensed Deck Officer for any necessary costs and expenses incurred, such as transportation, subsistence and loss of wages (but excluding the amount of any judgment which may be rendered against such Licensed Deck Officer) in defending such litigation, or in appearing as a witness in any civil or other litigation, or at any proceeding at his Employer's request. Further, the Company agrees (1) not to implead any Licensed Deck Officer, or his estate, in any action brought against the Company and (2) not to file any suit for damages against any Licensed Deck Officer, or his estate, because of any act or omission not constituting willful misconduct of such Licensed Deck Officer in the course and scope of his employment. For the purposes of this Section, a Licensed Deck Officer shall be considered to be acting in the course and scope of his employment even though off duty if he is aboard the vessel and on the Company payroll.

2. If legislation or government regulations, now or hereafter provide that Licensed Deck Officers may be held liable for pollution caused by their vessels, then in absence of willful misconduct on the part of the Licensed Deck Officer, the Employer shall be obligated in any litigation or proceeding under such legislation or regulations (a) either to extend the services of legal counsel, or to pay the reasonable attorney fees charged to the Licensed Deck Officer should the Employer not extend the service of legal counsel, **(b)** to pay all his other costs and expenses, including those set forth in (1) above, of any litigation or proceeding in which the Licensed Deck Officer is involved, and **(c)** to reimburse the Licensed Deck Officer for any "fines" or other levies that may be imposed and for all lost wages of such Licensed Deck Officer resulting from his being involved in any such proceeding; and **(d)** to hold the Licensed Deck Officer harmless for any other costs or sanctions imposed under such legislation or regulations.

SECTION XXXIV. WAR ZONES, AREAS OF HOSTILITIES AND INSURANCE COVERAGE

1. War Zones. Any vessel going into any war zones, or areas rendered unsafe by virtue of hostilities, shall be subject to special negotiations with regard to increase of wages, or bonus or other special benefit.

2. War Risk Insurance

a. The Company will continue in effect for Licensed Deck Officers, War Risk Insurance as described in General Order 75 (Revised) Part 308, as printed in the Federal Register issue of February 28, 1957, including the provisions of Article 17 relating to Detention and Repatriation benefits, including wages, transportation, allotments and other benefits as provided in said Article 17. If such insurance is no longer available during the life of this Agreement, the subject of protection for internment (Detention and Repatriation) shall be open for special negotiations.

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b. If a Company does not fulfill its obligation to obtain War Risk Insurance, the following "war risk insurance" benefits shall be paid:

i. Life Insurance benefits of $20,000.

ii. Monthly disability benefits of $600 per month up to a total maximum payment of $20,000.

iii. Dismemberment benefits that are the equivalent of the then current MMP Welfare Plan.

iv. Detention benefits which shall be the base wages during the period of detention until such time as the Licensed Deck Officer is returned to a Continental United States port. These benefits shall be payable to his beneficiary or next of kin.

If there is no beneficiary or next of kin, it shall be paid to the Licensed Deck Officer on his return to the Continental United States.

3. No Sailing Delays. The Organiaztion agrees that no sailing shall be delayed because of failure to reach a prompt agreement, but that, if it becomes necessary, the prescribed steps for adjustment of the dispute shall be followed subsequent to the vessel's departure.

4. New Hostilities. Irrespective of whether prior negotiations have been held or completed, the Area Bonus, Vessel Attack Bonus and Harbor Attack Bonus provisions which are part of the special Vietnam memorandum shall be applicable, and the bonus amounts set forth in that memorandum shall be payable to the Licensed Deck Officers employed on any vessel which is in a defined harbor when another vessel is subjected to attack in that harbor. If a vessel is attacked on the high seas by a combatant in an area that is or becomes a war zone or area rendered unsafe by virtue of hostilities, the provisions of this section shall apply.

5. Requirements for Insurance. The Parties agree that upon the establishment of a requirement for increased premiums for hull insurance for war risk or areas of hostility, the Company shall insure the Licensed Deck Officers in such areas in the same amounts and covering the same losses and risks as set forth above referrable to the Vietnam area. The obligation to maintain such insurance shall terminate when the requirement for increased premiums for hull insurance shall terminate.

6. Presumption of Loss. The Parties recognize that a Licensed Deck Officer may be in a war zone or an area rendered unsafe by hostilities and may disappear or die under circumstances such that there is no clear proof whether his disappearance or death was the result of hostile action.

The Parties agree that under these circumstances there shall be a rebuttable presumption that his disappearance or death resulted from hostile action, and that beneficiary or next of kin shall be entitled to war risk life insurance benefits of $20,000 which shall be paid three months after his disappearance or death.

If it later develops, on the basis of further proof not previously available, that war risk insurance was improperly paid, the Company shall have the right to pursue legal remedies.

7. Compensation for Loss of Effects

a. In the event of fire, shipwreck or loss of vessel, and the Licensed Deck Officer sustains partial or total loss of clothing, compensation not to exceed seven hundred fifty ($750.00) dollars will be paid each Licensed Deck Officer.

b. In the event of fire, shipwreck or loss of vessel, and the Licensed Deck Officer sustains partial or total loss of navigation instruments and equipment, additional compensation not to exceed three hundred ($300.00) dollars will be paid to each such Licensed Deck Officer unless there is a proven greater loss, in which case such additional compensation shall not exceed five hundred ($500.00) dollars.

c. The provisions of (a) and (b) of this Subsection 7 are conditional on such loss not being recoverable under war risk agreements between the Company and the Organization.

SECTION XXXV. MECHANIZATION AND AUTOMATION FUND (ALL CONTRACT COMPANIES EXCEPT PMA)

The parties agree to establish a Mechanization and Automation Fund. The Union shall have the right to allocate to the Fund some of the monies referred to in Section I, paragraph 3 and paragraph 4.

SECTION XXXV. MECHANIZATION AND AUTOMATION FUND (PMA ONLY)

All contributions to the MMP-PMA Mechanization and Automation Fund made as provided in Section XXXVII of the parties' Agreement effective June 16, 1961, and their further Agreement of September 20, 1963 (executed October 4, 1963) shall be used and applied as provided in the Agreement of September 20, 1963. All contributions shall be discontinued as of June 16, 1964, and any contributions thereafter shall be only by agreement of the parties. Any contributions payable for the period prior to June 16, 1964, but received thereafter shall be deposited, used and applied as provided in the Agreement of September 20, 1963.

SECTION XXXVI. GRIEVANCE PROCEDURE AND ARBITRATION

a. There shall be no strikes, lockouts or stoppages of work during the period of this Agreement, provided however, that the foregoing provisions shall not be applicable if the Company becomes delinquent in Pension, Welfare, Vacation, or any other MM&P Plan or Committee payments, allotments, or earned wages.

All disputes relating to the interpretation or performance of this Agreement which may arise between the parties to this Agreement shall be determined by a Licensed Personnel Board consisting of two persons appointed by the Organization and two persons appointed by the Company. The parties shall submit any such dispute for decision by the Board and they agree to be bound by the decision

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of a majority thereof. The Board shall agree to such rules of procedure as it may deem necessary.

In the event no settlement is reached by the Board, the issue may be referred to the Arbitrator by either party for arbitration. The cost of the arbitration shall be borne equally by the Organization and the Company involved.

Unless some other place is mutually agreed upon, the board shall meet in New York (San Francisco in the case of PMA companies) promptly upon the written notice from either the Organization or the Company.

The Organization and the Company may appoint alternates to act in place of the regular members of the Board.

b. John Gentry, Esq. shall serve as Arbitrator and David Feller, Esq. shall serve as Alternate Arbitrator.

The parties agree that all questions as to whether a dispute is arbitrable shall be submitted to and decided by the Arbitrator; provided, however, the Arbitrator shall be without authority to amend the terms of the collective bargaining agreement. The parties agree that all questions concerning the interpretation of an award made by the Arbitrator shall be re-submitted to the Arbitrator for a decision.

c. Pursuant to (a) and (b) above:

The Arbitrator will serve as Chairman of any meeting of the Licensed Personnel Board without vote. If said Board resolves any grievance, either by a majority vote or by mutual agreement, said grievance shall be deemed settled, and the decision shall be final and binding.

d. In the absence of such final disposition by the Licensed Personnel Board, the Arbitrator will then have jurisdiction of the case to render a decision as Arbitrator. Either party may request a further opportunity to present additional evidence for the purpose of the arbitration proceeding. In the absence of any such request or if the Arbitrator should deny such request, he will proceed to issue an award without the need of any further hearings.

e. A fixed date in each calendar month shall be designated for the meeting of the Licensed Personnel Board with respect to any grievances that each party may have. The Company and the Union agree that in order to properly have a grievance submitted to the Licensed Personnel Board at its regular monthly meeting, at least five (5) days' notice, in writing, must be given to the other party, setting forth the nature of the grievance and the relief requested, unless such time limitation is waived. If there are no grievances to be presented at any designated monthly meeting, the Arbitrator will be given twenty-four (24) hours' notice by the parties prior to the date of such meeting and said meeting will be cancelled.

f. Either party may, in addition to such fixed meetings, have the right, by telegraphic notice to the other party and to the Arbitrator, to request a convening of the Licensed Personnel Board to consider a grievance the nature of which requires immediate disposition. In such event the Board shall meet as expeditiously as possible but in no event later than twenty-four (24) hours after receipt of said notice. In such case the award of the Licensed Personnel Board and, where a deadlock of the Licensed Personnel Board occurs, the Arbitrator, if requested by the aggrieved party, shall issue his decision forthwith and in no event later than five (5) hours after the conclusion of the hearing. In addition, the aggrieved party may agree to waive this time limitation with respect to all or part of the relief requested.

The award of the Arbitrator shall be in writing and may be issued with or without an opinion. If any party desires an opinion, one shall be issued, but its issuance shall not delay compliance with and enforcement of the award.

g. The failure of any party to attend an arbitration hearing as scheduled by the Arbitrator shall not delay said arbitration and the Arbitrator is authorized to proceed to take evidence and to issue an award as though such party were present.

h. It is the desire and purpose of the parties that all grievances, available for Licensed Personnel Board or Arbitration, be disposed of as promptly and expeditiously as possible.

SECTION XXXVII. CO-EXTENSIVE EMPLOYMENT POOL

The parties agree that there will be established an employment pool which will consist of all Employees eligible to be employed on vessels covered by a collective bargaining agreement with the Organization. Individuals in the employment pool shall consist of all those who are maintained on the shipping lists in each MM&P hiring hall from which Employers covered by an Agreement with MM&P obtain covered Employees.

The parties agree that the provisions of this Agreement are aimed to cover and protect all individuals in the aforesaid employment pool and to insure that their job opportunities are maintained and preserved. It is thus agreed for purposes of the protection of the jobs of the Licensed Deck Officers and for purpose of preserving their work and job opportunities, covered Employees are to be considered co-extensive with the employment pool consisting of all Licensed Deck Officers available for shipping in the MM&P employment offices.

SECTION XXXVIII. CONTRACT DEFINITIONS

1. Cargo Activity

The term "cargo activity" as used in this Agreement shall include the following types of operations (which may apply, either in part or in whole, to particular types of tankship operations under certain conditions):

a. Loading or discharging of containers, lighters, or barges (whether empty or not).

b. Loading or discharging mail, baggage or any type cargo.

c. Opening or closing hatches or tanks when this work is performed by longshoremen or any other persons for cargo related work, or by crew members receiving compensation attributable to cargo related work.

d. Shoring, lashing, tomming, building catwalks or removing same when this work is performed aboard the

EXHIBIT "A"

vessel by coopers, longshoremen, or crew members receiving additional compensation attributable to cargo work.

e. Anytime longshoremen or contractors are aboard and performing cargo related work or when crew members are being compensated for this type of work at the cargo rate.

f. Connecting or disconnecting hoses or piping for the purpose of loading or discharging liquid or gaseous cargo or ballast or tank washings to shore facilities or to another vessel, barge or lighter. It is understood for the purposes of this subsection that the vessel need not be in port.

g. Replenishment operations including the transfer of cargo, stores, or bunkers between vessels or aircraft at sea.

h. It is the intent of the parties that "cargo activity" as defined in this section will not place the vessel under port time conditions unless the provisions of Section XIV are applicable.

SECTION XXXIX. GENERAL AND WORKING CONDITIONS

1. Time Off in Port—DRY CARGO

a. Upon completing an Offshore voyage, or, in the case of any vessel engaged in coastal, intercoastal or nearby foreign trade, on completion of a voyage during which there occurs the 30th day of continuous employment, a Licensed Deck Officer who remains in continuous employment with the Company will be entitled to a full twenty-four (24) hour day off, with pay, while the vessel is in port and before its next voyage. A record of days off shall be maintained by the vessel. The one working day off in port is not applicable where the vessel goes in layup or the Licensed Deck Officer goes on vacation or leave of absence or if the Licensed Deck Officer receives additional vacation under the fast-turn Agreement provided, however, that the Licensed Deck Officer shall still be entitled to any accrued days off which he had not heretofore taken.

b. Any time off practice in effect during the life of the preceding Agreement which is superior to this minimum provision, shall continue in effect.

c. In the event the Licensed Deck Officer is not granted or is unable to obtain a day off in port in accordance with the foregoing, he shall receive one (1) additional day's vacation pay. This payment shall be made when the Licensed Deck Officer applies for vacation.

1. Time Off in Port — TANKERS. Licensed Deck Officers shall continue to be entitled to time off in port as described in Section XII.

2. Log Books. Licensed Deck Officers (including Port Relief Officers) shall not be required to make entries in more than one (1) Deck Log Book. Carbon copy form of Log Books shall be used by those companies desiring copies of the original log entries.

3. Assignment of Watches. When Licensed Deck Officers are assigned to watches as provided by applicable sections of this Agreement, watches so assigned become the normal day's work and any work performed by them outside their assigned watch must be authorized and they shall be paid additional compensation as specified in Section XI.

4. Navigation Watches.

a. Except in the event of an emergency or for reasons of personal privilege, an Officer in charge of a navigating watch shall not be relieved by the Master.

b. No restrictions shall be placed on the use of any aid to navigation located on the bridge or on the use of charts or publications. Violations of this subsection shall be brought to the attention of the Joint Safety Committee for action.

c. When a vessel is manned by less than the number of Officers required by the Certificate of Inspection, the other Licensed Deck Officers shall divide the sea watches.

d. An Officer in charge of a sea watch shall not perform any paper work other than that connected with the immediate navigation of the vessel. This specifically means that they shall not:

i. Correct charts, light lists, or any other aid to navigation document not immediately in use. (This does not mean that a watch officer will make corrections from Notices to Mariners or any other source on a sea watch. It does mean that notations may be made on a chart or in a publication relating to things like incorrect characteristics of lights, wrecks sighted, etc.)

ii. Work on Commander's Reports, port reports, abstracts of passages, whether separate or incorporated on other than the daily working page of the Log Book, weather maps, special position or weather reports (excluding U.S. Weather Bureau or AMVER messages) required by the Company or a Charterer.

All such work when authorized to be performed at sea shall be performed on the Officer's watch below.

5. Returning Body of a Licensed Deck Officer. Whenever a Licensed Deck Officer dies while in the service of the Company, upon request of his next of kin, his body and personal effects shall be returned to his original port of engagement on a Company vessel or to a place designated by his next of kin, provided that the place designated by the next of kin does not cause additional expense.

6. Visual Signaling. When ship-to-ship or ship-to-shore communications via visual signaling (i.e. flashing light or signal flags) is expected or commences when navigating in restricted waters, a Licensed Deck Officer, other than the watchstanding Officer, shall be used for such signaling exchange.

7. AMVER. The Company agrees that all owned or operated vessels will be participants in the AMVER program of the U.S. Coast Guard on voyages that coverage applies.

8. Division of Work. The opportunity for the watchstanding Licensed Deck Officer to perform work in connection with "shifting ship" and "mooring and unmooring" shall be divided as equally as possible among these Officers during the course of a voyage.

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9. Time Changes. When ships' clocks are advanced or retarded at sea, the time change shall be divided equally among the three (3) navigational watches provided these time changes may be accomplished between the hours of 1800 and 0600.

10. Gangway Auto Privileges. On company controlled terminals, when joining or leaving a vessel, a Licensed Deck Officer shall be permitted to drive in auto or taxi to the gangway in order to transfer personal effects, at times when cargo operations are not being conducted.

At container or barge terminals, it is recognized that cargo operations are usually continuous, therefore, at such terminals, the foregoing shall not apply if regularly scheduled shuttle bus service is provided from the Gate to the vessel's gangway and such service is available to all Licensed Deck Officers and can accommodate conventional Officer's baggage. Baggage may be left in the gatehouse while the Licensed Deck Officer parks his car in the parking lot.

11. Availability of Coffee

a. When Licensed Deck Officers are called back or called out for duty, fresh coffee shall be available.

b. When a Watch Officer is the only Licensed Deck Officer on duty, he shall not be required to remain in the hatches for prolonged periods. When there is more than one (1) Licensed Deck Officer on watch, a Licensed Deck Officer (including the Port Relief Officer), shall not be required to remain in the hatches for a period to exceed two (2) hours without being relieved for coffee time.

12. Communication Requirements. DRY CARGO (ONLY). On any vessel that does not have equipment to enable the Licensed Deck Officer on duty to call the vessel's Electrician(s) or Reefer Engineer from main deck of the vessel when they are needed, the Licensed Deck Officer shall only be required to notify the Engineer on watch when such unlicensed personnel are needed.

13. Forwarding Notice to Mariners and Mail. The Company shall send by air mail to vessels in foreign ports, on scheduled runs, the most reecnt Notices to Mariners and will also forward all first class personal mail received in the Company offices with the required international postage affixed.

Vessels on unscheduled runs will have mail forwarded to the port of final discharge overseas and to the arrival port in the United States. Vessels trading worldwide on long-term articles will have mail forwarded in accordance with the vessel's itinerary in an expeditious manner.

14. Payoff by Master. The Master shall not be required to return to the vessel or remain aboard the vessel for the purpose of paying off any member of the crew or any person dispatched from any union to relieve any crew member, after 1700 and before 0800 and on Saturdays, Sundays or Holidays. *(TANKERS: unless compensated as specified elsewhere in this Agreement)* provided however, that this shall not be in conflict with his required presence for the signing on or signing off of voyage articles.

15. Fines. Unless he is guilty of negligence, a Licensed Deck Officer fined by a governmental authority for any act or omission attributable to his employment, shall be reimbursed for said fine.

16. Copy of Directives. A copy of all Company directives which affect this Collective Bargaining Agreement shall be sent to the Headquarters Office of the Organization. It is expressly agreed that no communications containing material of a confidential or privileged nature need be provided nor shall communications which contain information relating to trade secrets or practices be provided.

17. Uniforms

a. Present practice in individual companies with respect to cleaning and/or laundering uniforms and furnishing of cap devices, gold insignia, gold stripe or gold braid, or other trimmings, will be continued.

b. On passenger ships or on freighters carrying passengers that provide laundry service for passengers, the Licensed Deck Officers shall have their uniforms (including shirts) laundered free of charge if the Licensed Deck Officers are required to wear uniforms. *(Not applicable to Tankers.)*

c. On vessels not carrying passengers and the Company provides epaulets for the uniform shirts, khaki uniforms (no neckties) may be required to be worn by the Licensed Deck Officers in port. *(Not applicable to Tankers.)*

d. When dress uniforms are required, the Company will reimburse the Officer for the cost of cleaning upon presentation of a receipt for same. *(Not applicable to Tankers.)*

e. When the Company furnishes cap braid, a cap device with Company insignia and cap cover, peaked Officers' caps may be required to be worn when appropriate. *(Not applicable to Tankers.)*

f. Safety hats and goggles will be furnished to Licensed Deck Officers.

18. Penalty Rate Work. The normal duties of Licensed Deck Officers shall continue as supervisory and professional. Any Officer required to perform work customarily performed by unlicensed personnel shall receive the penalty rate described in Section XI in addition to any other compensation payable.

19. Contaminated Spaces

a. When Officers, in the performance of their duties, are required to enter dirty confined spaces such as cofferdams, voids, double bottoms, pipe tunnels, peak tanks, deep tanks or any other spaces that are simialr, they shall be provided all necessary protective clothing and equipment such as boiler suits, safety helmets, masks, rubber boots, or any other protective equipment dictated by the circumstances.

b. DRY CARGO (ONLY)—During the period such work is performed, the Licensed Deck Officer involved shall receive the penalty rate in addition to any other compensation being paid.

20. Company Slop Chest. The slop chest required by the Navigation Laws of the United States on certain vessels, for which an owner shall be liable to a penalty of $500 for failure to provide before sailing, may not be owned by a Licensed Deck Officer, although he may be required to operate same for the account of the Company.

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21. Payrolls

DRY CARGO—The Master shall not be required to prepare the vessel payroll.

TANKER—The Master shall not be required to prepare the vessel payroll except when he receives a total additional compensation of one hundred twenty-five ($125.00) dollars per payroll period. The Master shall make every effort to have the payroll prepared at premium time in accordance with the intent of Section XI, Subsection 11.

22. Master Handling Funds. The Master shall not be liable for any discrepancies in his settlement account unless they are directly caused by his own personal negligence.

23. Joint Safety Committee

DRY CARGO—The parties agree to establish a Joint Safety Committee with their equal representation on such Committee. This Committee shall be responsible for and make recommendations concerning such safety aboard all vessels as is within the Jurisdiction of the Organization and the Duties of Officers, as defined in this Agreement.

TANKER—The parties agree to establish a Joint Tanker Safety Committee with equal representation on such Committee. This Committee shall meet at such times and locations mutually agreeable to the parties.

SECTION XL. RATIFICATION

This Agreement shall be deemed to have become final and binding upon the Parties hereto only upon the fulfillment of the following conditions: (a) Ratification of the Agreement by the membership of the Organization and (b) written notification of such ratification given by the Organization to the Company.

For the INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS

....
(International President)

Dated: ....

For the COMPANY:

....
(Company)

By ....

Title ....

E X H I B I T "A"

U. S. DISTRICT COURT
FILED
JUN 16 1975
S. D. OF N. Y.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

JAMES D. HODGSON, Secretary of Labor :
U.S. Department of Labor,

Plaintiff, :

-against-

72CIV5031 CBM

INTERNATIONAL ORGANIZATION OF MASTERS, :
MATES AND PILOTS, INTERNATIONAL MARITIME
DIVISION, ILA, AFL-CIO, :

Defendants.

- x

DEPOSITION of Defendant, by THOMAS F. O'CALLGHAN, taken by Plaintiff, held at the offices of United States Attorney, Southern District of New York, Foley Square, New York City, Room 329, on the 22nd day of May, 1974, at 1:00 p.m., pursuant to notice dated June 2, 1973, before Anthony Mancuso, a Notary Public and Snorthand Reporter of the State of New York.

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A No.

Q Did you bring any documents with you today?

A Nothing pertaining to this. Everything in my bag is personal stuff; shaving gear and things like that.

Q We won't ask for production.

A I plan to leave for Baltimore as soon as I get through here.

Q Now, the structure that you have just described you refer to as interim, is that the structure as the union exists today?

A Yes.

Q Is that the contemplated structure of the union in [illegible] near future?

A Yes.

Q What did you mean by interim?

A In the next election, everyone in the Offshore Division will vote for all officers. Prior the locals only voted for the local officers and the international officers. But now, they will vote for everybody in every port. Every member of the Offshore Division will vote for every agent and official in every port where they are elected.

Q Just by way of example: Are you saying if somebody is running for port agent in Brownsville, Texas, that offshore members in Savannah, Georgia will vote for him?

A Absolutely, and they will vote for the man in Seattle and New York.

Q That wasn't true in 1971?

A No.

Q In 1971 a member voted only for his local candidate?

A And the international officer. Everybody voted for the international officers.

Q In 1971, I believe you stated that whoever was elected port agent of New York automatically became a Vice-President of the Offshore Atlantic Division and a representative to the Executive Committee; is that correct?

A That's correct.

Q With regard to that individual that I just described, the port agent of New York: in the 1971 election who voted for him, who was able to vote for him?

A The members of former Local 88, which was the members who belonged to local whose main office

A I was Chairman, frankly, of all of them.

Q Were you for these changes, personally?

A Absolutely, yes.

Q Were you the one that suggested that the 1971 election be run in the manner in which it was run: in other words, the split ballot?

A No.

Q How did that come about: who suggested that and what was the discussion and how was it finally resolved to handle it in the way it was handled?

A I would have to go into the record. I don't recall-- it was a general agreement that they would handle it in the same way that they handled it before; that the men would have their own former local membership vote for them.

Q Well, at the meetings that discussed these changes, do you recall anybody suggesting that the 1971 election be run as you were planning the next one to be run?

MR. SCHWARTZ: Do you mean by that --

A It wouldn't be run in the same way. No.

Q Let me rephrase the question.

You next election, you have mentioned and testified that all members of the Offshore Division will vote for all offshore position officers; correct?

A Yes.

Q Now, did anyone at any of the meetings prior to 1971 suggest that the 1971 election be run on that basis?

A Not that I recall.

Q You yourself didn't?

A No, I didn't.

Q Did you have any views on whether it should be effective in 1971?

A I had to run that way myself. I had to run where everyone -- I was on the ballot where everyone voted, so I would certainly have no objection, if everyone else went the same way. I didn't suggest that they do it. I don't think it's any secret that everyone that was in knew their own membership better than they knew the entire membership.

Q In 1971 did you run for any office besides International President?

A I ran for convention delegate -- I'm not sure, it probably was earlier. Yes, I ran on the same ballot in the convention in Baltimore, Q Are these committee slots sought after by union members?

A When you say "union members" who do you mean, rank and file?

Q No, officers in the union on the local level.

A They generally accept whomever the President appoints. I don't recall any coming around and asking to be appointed to a certain committee.

As I say, they are appointed 10 days before the convention starts. I have to send that out 10 days before.

Q Do you recall in the 1968 election in which you defeated Captain Sheldon what your margin of victory was?

A It was a landfall of about 150 votes.

Q Out of about how many cast?

A I think we had about, somewhere around 50 percent vote at that time. Between five and six thousand, maybe it was between four and six.

Q It wasn't a large margin?

A It was a landfall for us, it was a real victory.

Q Would you consider it a mandate?

A Yes. You can check all Masters, Mates and Pilots elections; they are all close.

Q Historically close?

A Yes.

Q Is there any reason you can account for the closeness of these elections?

A Differences of opinions.

MR. SCHWARTZ: It's a democratic process of a bunch of guys who figure they are all Captains.

Q Do you recall what your victory margin was in 1971?

A Couple hundred, 150, 175.

Q Out of about how many votes cast?

A I think it ran around 62 percent at that time.

The Masters, Mates and Pilots, I consider, one, a total victory and two, a landfall; two hundred is quite comfortable.

Q Did there come a time in 1971 that you as President of the International sent out a notice of election for that year?

A I beg your pardon?

Q Did there come a time in 1971 that you

MR. DAVAS: Thank you for the clarification. Let me ask the question in another way.

Q Were any of these five gentlemen, to your knowledge, members of the International Executive Committee, after the change-over which limited membership of that committee to offshore vice-presidents or international officers?

MR. SCHWARTZ: I object to the form of the question. It's an incorrect statement. The new by-laws don't limit it in that way and that's been explained to you by Captain O'Callghan.

MR. DAVAS: There hasn't yet been an election.

MR. SCHWARTZ: No . It includes not only the International President and the International Secretary-Treasurer and the Internationa Vice-President, it includes them, it includes the people, the Vice-President from the Offshore Division. Whether it includes the executive officer of any other local, that's not part of a fully formed division.

Q By the way, talking about the new set-up: You say that all offshore members will now be voted for all offshore positions; correct?

A That's true.

Q Does that new set-up also allow all offshore members to run for any offshore position?

A Yes.

Q If I were a member of the New York local, or the New York Division, Port of New York --

A You could run against me or you could run in San Francisco.

Q I could run in Galveston as port agent?

A Yes, indeed.

Q Would there be any requirement that you live down in Galveston?

A No.

Q Would there be any requirement that I knew about Galveston or went down there and spent some time there?

A No.

Q Same thing for nominations?

A Pardon?

Q Same thing for nominations?

A That's true. You have to be in good standing. That's all, a member in good standing. No requirement whatsoever: sea time or education or race, creed or color.

Q As President of the International, can you give me some insight as to what the rationale of allowing a situation in which a resident of New York could fulfill the position --

MR. SCHWARTZ: I'm going to give you that answer. You ought to read your own cases. At one time we had certain clarification requirements and after a whole session with this department, we eliminated them at the request of the department, because he had some mathematical formula that you thought was not desirable. We had requirements and qualifications for different positions and different jobs and this was taxed by the Department of Labor and eventually was the subject of a judicial settlement.

As a matter of fact, I don't know how this gets to be part of this complaint and I don't know how this is relevant to any of the issues that are involved here, other than your own personal curiosity. Is there any allegation in the complaint that refers to this?

MR. DANAS: There is not, as far as I could state. However, I think you will recognize, have any budget for the conducting of the '71 election?

A There's no budget for an election.

Q What does that mean?

A There isn't any budget. Whatever the AAA, if they are nominated by the convention, elected by the convention to be the -- to supervise the election, you pay them their fee. We don't set their fee, they set it.

MR. DANAS: I would like to have this document marked as Exhibit C for identification.

(Annual report, Form L.M.-2, marked Plaintiff's Exhibit C for identification.)

MR. SCHWARTZ: May I see that, please?

MR. DANAS: Yes.

Q Captain, I'd like to show you what has just been marked Exhibit C for identification and ask you whether you can identify it and if so would you describe it, please.

A It's the L.M.-2 form.

MR. SCHWARTZ: What is the year?

THE WITNESS: The year is 1971.

Q What is an L.M.-2 form?

A It's an annual report required by the

government.

Q That's a document filed with the Department of Labor?

A Yes.

Q Reporting the activities or some of the activities of the International organization of Masters, Mates and Pilots for the year 1971: is that your signature on the front page?

A Yes.

Q May I have that, please?

A Yes.

Q I'd like to direct your attention to the fifth page of this report, under the column, "Disbursement". There's an entry for election and ballot cost of $48,663: is that correct?

A It was made up by my auditor, a certified public auditor: I would say it was correct, yes.

Q Can you further break down that figure with regard to how the $48,000 was spent?

A I can get it for you.

Q Would you do that?

MR. DANAS: We'll leave a space in the

A I have not declared myself yet. We went over that last time.

Q I know we did. You made a definitive statement today and I thought there may have been a definitive announcement in the interim between our last meeting and today.

A I wouldn't make it here.

Q Well, you never know.

In that connection, I would like to ask you whether the Union is now in the process of conducting its pre-election procedures for 1974?

A Yes, the balloting is during the month of June.

MR. SCHWARTZ: Nominations.

A Nominations, rather. The nomination is only during the month of June for the Off-Shore Division and Pilot's Division.

Q When are the nominations for the International president and secretary-treasurer?

A At the Convention in August.

Q If you were to seek nomination for re-election in August, by when, under the Union's constitution would you have to announce your intention in that regard?

A After a certain number of days after the close of Convention, but I haven't looked at it -- you are nominated during the Convention, of course, you accept right there, but there is a period in case you are nominated by petition, ten days after the Convention, I don't know -- it is ten days after the close of nominations in June for those people to accept, but I would have to look up the constitution and see what it -- usually in the constitution you know who is going to run at the end of the Convention.

Q In any event, this past month, the month we are in now, June of 1974, nominations are open for Off-Shre Division officers?

A That's right. They are coming in every day.

Q Specifically, which officers within the Off-Shore Division are nominations now being received for?

A All officers where the men represent the Union, other than clerical work.

Q Name the officers, please?

A Very well. In New England, an agent and assistant port agent.

In New York --

Q Of what port?

A New England. New England, due to the action of the Executive Board --

MR. SCHWARTZ: Council.

A Executive Council, the Ports of Boston and Providence have been combined into the New England area.

Q When did that occur?

A Three or four months ago at the last Off-Shore Division Executive Council meeting for reasons of economy and due to the fact that Boston and Providence have gone down to practically nothing as far as shipping goes.

Q Which other officers?

A In New York, the port agent, the executive assistant port agent and four assistant port agents.

The Port of Philadelphia it has been combined under the Port of Baltimore and there will be an assistant port agent in Philadelphia.

In Baltimore there will be a port agent and two assistant port agents.

The executive assistant port agent's

job in Baltimore has been abolished.

In Norfolk there will be a port agent and assistant port agent.

In Charleston, South Carolina --

MR. SCHWARTZ: I don't remember myself.

A There will be an assistant port agent in Charleston, a port agent.

MR. SCHWARTZ: Check.

A I would like to check that. I think -- I won't say for sure in Charleston.

In Jacksonville, Florida, there will be a port agent.

In Mobile, Alabama, a port agent.

In New Orleans, port agent and three assistant port agents.

In Galveston, a port agent, executive -- I mean, a port agent, vice president of the Gulf and an assistant port agent.

In Houston, there will be a port agent and assistant port agent.

Los Angeles, port agent and assistant port agent.

San Francisco, a port agent, executive assistant port agent and three assistant port agents.

And Seattle and Portland, port agents.

The executive assistant port agents in Baltimore and New Orleans have been abolished.

Q With regard to the abolition of those last two mentioned positions and the others that were abolished that you mentioned and with regard to the merger in New England and in the Philadelphia port that you mentioned, were all of those actions taken at an Executive Council meeting?

A Yes.

MR. SCHWARTZ: The Off-Shore Division Executive Council, pursuant to a referendum adopted among the Off-Shore Division members.

MR. DANAS: I would like to get that. When was that referendum held?

MR. SCHWARTZ: I will give you the exact date. Roughtly it was held about six or eight months ago, authorizing the Off-Shore Division Executive Council to do what they did.

MR. DANAS: And that was with regard to the abolition of positions and the merger of ports?

MR. SCHWARTZ: On the basis of economy and things of that sort.

MR. DANAS: Just in the interest of

time, I gather that was a referencum open to all Off-Shore members?

MR. SCHWARTZ: Correct.

Q Were there any other changes in the Union's structure that occurred in the last two years that we have not discussed and that we have not been provided with, or that are not provided for in the new constitution.

In other words, changeover and above --

MR. SCHWARTZ: What we can do for you, if you want, is tell you what referendums have taken place. We referred to it in some of the papers that have been served in other procedures. All of these changes are done pursuant to referendum.

So, we will tell you what referendums.

MR. DANAS: Are the referendums, just so I understand it, held subject to the Executive Council decision on these matters?

MR. SCHWARTZ: No. They have to be authorized to take certain action before they can take it. The action is authorized, it is not done and then ratified.

In other words, the Executive Council is authorized to do certain things if they find such things.

MR. DANAS: In other words, the Executive Council rubber stamps the referendum?

MR. SCHWARTZ: The trouble is the way you blanketly characterize things. Rubber stamp is not the proper word. They don't rubber stamp it. They don't see what the referendum says.

MR. DANAS: They are authorized to do it?

MR. SCHWARTZ: Authorized to do it. They may or may not do it. They are given some general guidelines.

MR. DANAS: Let's go back.

Who authorizes the referendum to take place? How does that come back?

MR. SCHWARTZ: The Executive Council. They authorize the referendum.

Do you have a copy of the Off-Shore Division by-laws? It is very plain.

MR. DANAS: Yes. With regard to the referendum information --

MR. SCHWARTZ: Let me explain it to you.

What happens there is a provision as to

how you amend those by-laws, and what happens is that certain propositions have to be drafted and submitted to the membership.

They are all in the form of amendments to the by-laws.

The Executive Council has the job of getting up those amendments and causing them to be ballotted upon.

MR. DANAS: I understand.

MR. SCHWARTZ: And then it becomes an official amendment of the by-laws and the Executive Council then acts in accordance with the by-laws.

MR. DANAS: With regard to the referendums that you stated that you would provide to us, I would like to ask you for the minutes of the Executive Council meetings which both authorized the referendum and later acted upon the referendum.

MR. SCHWARTZ: Sure.

MR. DANAS: Thank you.

Q Now, Captain, are there any other positions within the Off-Shore Division for which nominations are open during the month of June of 1974 other than those you just mentioned?

A I believe I mentioned them all, and the

Pilot Division, of course, they have their nominations the same month.

Q You mentioned nominations for the position of Atlantic Vice President?

A Yes, Port of New York. No, the Port of New York Agent. Atlantic Vice President is one job.

Everybody votes for him throughout' the country.

Everybody votes throughout the country for ever elective job.

Q So the man who is elected New York Port Agent by all Off-Shore Division members automatically becomes vice president?

A Yes. The vice president, if a person wants -- vice president is part of the job of the New York Port Agent. The Gulf is part of the job of the Galveston Agent and San Francisco for the West Coast.

Q And those three vice presidents, as we dsicussed earlier, sit on the Executive Committee of the International, is that correct?

MR. SCHWARTZ: General Executive.

Q General Executive Committee?

A Board.

Q General Executive Board.

MR. SCHWARTZ: General Executive Board.

Q Are the three Off-Shore Division vice presidents that you just named the three top officers of the Off-Shore Division?

A No.

Q Who are those top officers?

A The top officers are the three International officers.

Q Well, with regard to the Off-Shore Division, what would their titles be?

A They are the Executive Officer -- the International President is the Executive Officer of the Off-Shore Division and the Secretary-Treasurer is the Finance Officer of the Off-Shore Division, and the Executive Vice President is the Executive Vice President of the Off-Shore Division.

Q Now, with regard to the three top officer positions of the Off-Shore Division, are nominations for those positions open during the month of June of 1974?

A No.

Q When are nominations for those positions held?

A At the convention.

Q Why are those nominations not held during June of 1974 along with the other officers of the Off-Shore Division?

A The constitution and by-laws don't call for it.

Q The constitution and by-laws of which organization?

A Of either or both, of the Off-Shore or the -- it constitutes the Off-Shore by-laws, the International President would be the Executive Officer.

MR. SCHWARTZ: And the International constitution says only the International Vice President shall be nominated.

Incidentally, the International constitution says ten days after.

Q So the constitution and by-laws of both the International and the Off-Shore Division provide that the three officers of the International, the President, Vice President and the Secretary-Treasurer automatically, by virtue of those positions, become the three top officers, executive officer, assistant executive officer and financial officer of the Off-Shore Division, is that correct?

A That is true.

Q With regard to the election for International President, what is the scope of the membership allowed to vote for him?

A Everybody that belongs to the International organization.

Q That is the Off-Shore Division members?

A Everyone.

Q The Pilot Division members?

A That's right.

Q And what else? The Inland Division?

A Whatever Inland local or regions that might be, or if there is any local, Panama Canal local, two locals from the Canal, all the subordinate bodies for the three top International officers.

Q And by virtue of the vote of all members of the Union that you just described, the president, the International president, so chosen, then descends to become the president or the chief executive officer of the Off-Shore Division, is that correct?

A He doesn't descend. When he's elected, he's elected to that office.

Q Which is a higher position within the Union structure, International President or Off-Shore Division Executive Officer.

A There is one position, it is a common position.

Q On paper in terms of the Union structure which one is a higher office.

A There isn't any such thing on paper.

Q Are you saying that there are not two separat officers?

A Absolutely.

Q I am not referring now to the person, to the individual, I am referring to the officers.

A It is the common office. If you are the International President you are the Executive Officer of the Off-Shore Division.

MR. SCHWARTZ: Is it really important to you which one is higher or lower or what? Does it really make any difference?

MR. DANAS: I am asking. He now holds those two positions.

Q Do you not?

A It is one position, it is not two. There are two positions and you are getting two --

Q Are the duties different as between your slot in the International -- as International President and your slot as Off-Shore Division Executive Officer?

A The duties for the International President as far as the Off-Shore goes, is identical; it is the same job.

Q Not as far as the Off-Shore goes. I am referring to your total scope of duties, are they the same?

A I don't understand your question.

Q When you act as International President, do you do anything in that capacity over and above or in addition to what you would do as Executive Officer of the Offshore Division?

A Both jobs are combined.

Q Do you ever take any action with regard to the Pilot Division as International President?

A Yes.

Q And do you ever take any action with regard to the Inland Division as International

President?

A Yes.

Q Now, it is clear, is it not, that you are not taking those actions as Off-Shore Division Executive Officer? Correct?

A No, it is not correct, because I don't divest myself as being Executive Officer of the Off-Shore Division when I do something for the Inland Division.

Q Let's go through it again. Is there any document which we can point to which outlines your duties as International President?

A Yes.

Q What is that document?

A The International Constitution.

Q And is there any document that encompasses or outlines your duties as Executive Officer of the Off-Shore Division?

A Yes.

Q Where is that?

A The by-laws of the Off-Shore Division.

Q And is it your testimony that the provisions of the International Constitution with regard to the president's duties and the provisions of the Off-Shore Division by-laws with regard to the president's duties or the executive officer's duties are identical?

A I don't think it is an answerable question because the Inland is not a fully formed division.

And they have autonomy where they run their own affairs considerably more than the Off-Shore Division does.

So -- as far as the Pilot Division goes, I am the executive officer of the Pilot Division. It is a fully formed division.

One day we hope out of this mess that this Union was that it will be fully -- all divisions will be fully formed and it will have one person at the head of it whenever that might be.

Whenever it is a fully formed division of the Inland, I will become the executive officer of the Inland Division. Until that day is reached, they have their own autonomy and they do certain things, but they are responsible to the International Constitution which they can't be in violation of.

Q Is a fully formed division a union, a labor union in and of itself?

MR. SCHWARTZ: That calls for a legal conclusion.

MR. DANAS: All right.

Q Does the Off-Shore Division, to your knowledge, file any separate Labor Department forms?

A They file, my office with my name on them as the executive officer.

Q Of the Off-Shore Division?

A That's right. The Pilot Division does the same, but the Inland Division and the Panama Canal Pilots file their own with copies to my office.

Q Again, just to recap, we have the three International officers who automatically are Off-Shore Division -- the three top Off-Shore Division officers. We have the three Vice Presidents of the Off-Shore Division. We now have those six persons.

Are there any other persons who sit on the Executive Council?

MR. SCHWARTZ: The Executive Board.

Q The Executive Board.

A All of the port agents throughout the country.

MR. SCHWARTZ: Of the Executive Board, not the Executive Council.

A Oh, that would be the three top officers, the three vice presidents, and the vice president in charge of the Pilot Division and all of the Executive Officers of the subordinate bodies.

Q The Inland Divisions?

A That's right.

MR. SCHWARTZ: Different locals?

A Yes.

Q How many members does that constitute of the Executive Board, approximately?

A Right now, 11, I believe.

MR. DANAS: Mr. Schwartz, just again so we understand this, is this Executive Board that we just discussed the Board or the group that acts with regard to the referendums that we referred to earlier?

MR. SCHWARTZ: No.

MR. DANAS: The other one is the Executive Council?

MR. SCHWARTZ: Write it down, otherwise it gets very confusing. It is the Off-Shore Division Executive Council.

You find that in the buff colored book that has the Offshore Division by-laws that we furnished you.

All right?

MR. DANAS: Yes.

MR. SCHWARTZ: The other one which is provided for in the blue book which is the International Constitution, is called the General Executive Board. It is confusing and one of the reasons it is confusing is that sometimes we ourselves use the names inaccurately.

We might say Executive Council. It is a difference and quite a substantial difference.

MR. DANAS: Now that I have written it down I hope I won't make the same mistake again.

MR. SCHWARTZ: It is hard if you don't write it down.

MR. DANAS: Of course if the members make the same mistake, I guess I am entitled to a few this morning.

MR. SCHWARTZ: Right.

Q What exactly are your duties, Captain, with regard to the Offshore Division?

A Well, the duties of President are spelled out in the Division by-laws.

Give me one.

Q I can always refer to the by-laws, but just explain to me on a daily, weekly basis what are your duties with respect to the Offshore Division?

A Overall supervision of the Offshore Division.

Q Do you attend meetings of the Offshore Division Council?

MR. SCHWARTZ: Look at this.

(Handing.)

A Would it be better if I read this to you?

Q Well, I tell you, I don't think it is necessary for you to read your duties. I am asking you to briefly describe them. If you can't, then we can read it just as well off the record.

A It's overall supervision of the Union -- of the Offshore Division.

Q Do you handle the finances of the Offshore Division?

A I don't handle it. I have a finance officer and I check with him quite often.

Q Who is that?

A Robert Lowen, the financial officer. We also have a comptroller who does similar work.

Q Where is the Offshore Division Executive offices, or the central office for the Offshore Division?

A 39 Broadway.

Q The same place as the office of the International?

A Yes, my office.

Q Are there any other officers of the Offshore Division?

A We have got a general office on the West Coast, just outside of any port office in San Francisco, separate from a port office in San Francisco.

Q Are separate financial books and records kept for the International Union and for the Offshore Division?

A Yes.

Q And there are separate funds, I gather, for both?

A Yes, that's right.

Q Segregated accounts?

A Yes.

Q And do you or Captain Lowen administer both of those sets of accounts?

A Yes.

Q Do you as President of the International have an expense account?

A Yes.

Q Do you as President of the Offshore Division have a separate expense account?

MR. SCHWARTZ: He's not the President of the Offshore Division.

Q Executive Officer of the Offshore Division.

A If I have expenses chargeable to the Offshore Division I charge it to the Offshore Division.

Q So there is an expense account for your use in the Offshore Division?

A It is charged to the Offshore Division, yes.

Q Would the same thing be true for Captain Lowen?

A Yes.

Q And for Captain Caldwell?

A Yes.

Q Are there any other persons besides the three International officers who would have access to expense accounts of both the International and the Offshore Division?

A If I would assign somebody to work on something that happened to be an Inland Pilot or happened to be a Pilot Division to do something for the Offshore the expenses would be charged to the Offshore Division.

Q I am referring to any persons who on their own, without being assigned by one of you three, could have access to both?

A No.

MR. SCHWARTZ: Off the record.

(Discussion off the record.)

Q Captain, getting back to Exhibit D that we marked earlier this morning and the decision of Judge Croake with regard to that Exhibit, in the course of the litigation before Judge Croake and prior to his decision, you submitted an affidavit to the Judge, and in that affidavit you stated on page 5 that a special election supplement of the Masters, Mates and Pilots Magazine would be

AFTERNOON SESSION

1:15 p.m.

xx THOMAS F. O'CALLAGHAN, resumed.

xx EXAMINATION CONTINUED

BY MR. DANAS:

Q Captain, earlier today we discussed the General Executive Board of the International Organization and you described the members of that Board.

Now, would you describe the manner of the voting on that Board?

A I believe the vote was 401, but I would have to look it up. That is voting per capita.

Q You have one vote on the Board?

A No, I have what other members are there divided by the total number of votes.

MR. SCHWARTZ: Let me just say this -- maybe we will save about a half hour of questioning -- you asked this any number of times, and I thought the record was clear.

As soon as the division is fully formed the International officials who then assume certain duties with regard to the fully formed division vote a proportionate share along with the vice president from that division of the per capita. So that, for example, with regard to the Offshore Division, the three International officials by virtue of their position in the Offshore Division Executive Council -- rather, by virtue of their position with the Offshore Division, would vote in combination half of the per capita vote of the Offshore Division. Right?

THE WITNESS: Yes.

MR. SCHWARTZ: And the other three Offshore Division vice presidents who act as members of the General Executive Board, vote the other half.

Similarly when the Pilots Division is fully formed there is one vice president, the three International officials and the one vice president who splut the per capita of the Pilots Division.

That means the vote in addition to the vote they have from the Offshore Division, they will vote three quarters in combination of the per capita of the Pilot's Division.

MR. DANAS: The three Executive officers will vote three quarters?

MR. SCHWARTZ: Yes.

MR. DANAS: What about with regard to the Inland Division?

MR. SCHWARTZ: As I recall it, since there is no one there, it is not a fully formed division, they do their own and they have no vote.

MR. DANAS: I thought you said before they sit on the General Executive Board.

MR. SCHWARTZ: They do, but the executive office of each of these locals vote per capita.

MR. DANAS: With regard to the general vote of the Board, you take the Offshore Division's vote split up as you just mentioned, what percentage of the Board vote does the Offshore Division constitute?

MR. SCHWARTZ: I don't know offhand. It would depend on the relative number of members. I suppose the Offshore Division is the majority certainly of the members.

How many men are there in the Offshore Division?

THE WITNESS: 2,000 and 2,000.

MR. SCHWARTZ: 6,000, and probably the combination of the others, about 3500 or 3,000.

MR. YOUNG: About --

MR. DANAS: What percentage would that be, approximately?

MR. SCHWARTZ: 60 per cent, 70 per cent. The Offshore Division, a majority of the men.

MR. DANAS: If the Offshore Division has 70 per cent of the vote of the Board, then the three International Officers would have 35 per cent of the vote of the Board?

MR. SCHWARTZ: Correct. But then they have added on to that any other fully formed division.

MR. DANAS: Is the 35 per cent vote just mentioned in addition to their vote as International officers?

MR. SCHWARTZ: No, it is not in addition to their vote as International officers, because the vote of International officers per se is nothing on the Board because the vote comes from the Division or from the local.

They have no separate vote other than that.

MR. DANAS: Captain O'Callaghan, Captain Lowen and Captain Caldwell, as of now vote only once and that is half of the Offshore Division?

MR. SCHWARTZ: And vote three quarters of the Pilot's Division.

MR. DANAS: Beyond that they don't vote as straight International Officers?

MR. SCHWARTZ: No.

MR. YOUNG: Are they entitled to vote as International officers on the General Executive Board?

MR. SCHWARTZ: No, I think not. That is my general understanding. The chairman usually has the right to break a tie, but the likelihood of a tie when you are voting, you know, 6,000, 841 and 6,00, 332, the likelihood of a tie -- if you had it once in two hundred years it would be remarkable.

They don't vote on the General Executive Board by virtue of their own position.

Q Regarding the Offshore Division Executive Council meetings, you attend those as Executive Officer of the Offshore Division?

A Yes.

Q How is the voting broken down at those meetings?

MR. SCHWARTZ: Everybody votes once. Everybody has one vote. I think we went through it last time and I showed you the proportion --

MR. DANAS: We didn't go through it.

MR. SCHWARTZ: No? Take a look -- did I give you the Offshore Division?

THE WITNESS: I got it.

MR. SCHWARTZ: Yes. Take a look at the Offshore Division and it is under article 11, Offshore Division Executive Council. There are some 20 odd people on that council as indicated by the appropriate section and everybody has one vote.

MR. DANAS: Article 11 of the by-laws of the Offshore Division you just referred to?

MR. SCHWARTZ: Nine.

MR. DANAS: Article 9 of the Offshore Division by-laws indicate that the vice president of the Atlantic Division shall get one vote and it also indicates that the port agent of New York shall get one vote.

MR. SCHWARTZ: It is the same. They don't get two votes. It is a combination thing. This was set up with the possibility you might have two such people.

However, as the result of a recent referendum we avoided that. It is definite now it is only going to be one job. This way they get one vote.

MR. DANAS: Is that recent referendum one that will be provided to us?

MR. SCHWARTZ: Yes. You see, as it stood now there was a question about the requirement of actually electing the port agent separately as one job and then having another job as vice president, but that was clarified in the recent referendum because it just wasn't necessary to have two jobs. But they have one vote.

MR. YOUNG: Does it say here there is only one vote?

MR. SCHWARTZ: No, it doesn't say it expressly. They don't get two votes.

MR. DANAS: I gather further where it says the port agent of Boston gets one vote and the port agent of Providence gets one vote, it is now just one vote in this New England port?

MR. SCHWARTZ: Right.

MR. DANAS: Would the same changes be

made to Philadelphia, Baltimore, Norfolk, et cetera?

MR. SCHWARTZ: They all haven't been changed.

THE WITNESS: Only Philadelphia.

MR. SCHWARTZ: Only Philadelphia.

MR. DANAS: Philadelphia is merged into Baltimore.

MR. SCHWARTZ: Right.

MR. DANAS: And there is only one vote between Baltimore and Philadelphia now?

MR.SCHWARTZ: Yes.

MR. DANAS: So even though article 9 is misleading, you are representing that there is only one vote per man?

MR. SCHWARTZ: I don't know whether article 9 is misleading or not.

MR. DANAS: It does indicate. I think you will agree the port agent of New York --

MR. SCHWARTZ: I won't argue language with you. I will agree it doesn't expressly so state and that it might be confusing, but representing the way it actually would, everybody gets one vote.

Q Captain, with regard to these vice presidents of the Offshore Division, Atlantic, Gulf and to ask for a five-minute adjournment to see if we have any further questions. We may be finished today.

Just give us a couple of minutes.

MR. SCHWARTZ: All right.

(Recess.)

MR. DANAS: I just have a few more questions.

Q Captain, you stated before that the Offshore Division was a subordinate body to the International for certain purposes. Would you expand upon that? In what ways, in what areas is it subordinate?

A Well, I was -- when I used the word "subordinate" it is part of the International, the same as every other division, the subordinate of the whole. I don't know just what kind of an explanation you want. But it is subordinate in the same manner that any of the fully formed divisions are a subordinate body of the International.

Q Well, you are talking to a person who has no knowledge of what a fully formed body is, a layman with regard to that. So why don't you explain to me --

MR. SCHWARTZ: Why don't you let me explain?

MR. DANAS: I would like the Captain to explain it.

MR. SCHWARTZ: But part of the International constitution has certain things they have to do.

For example, they can change the dues.

MR. DANAS: Let me preface all of this, no matter which one of you want to answer, I would like to know what the relationship is as you see it, between the International and the Offshore Division with regard to independent or with regard to subordination and in what areas.

MR. SCHWARTZ: To tell you the truth, I wouldn't know how to answer a question like that. The form of the question is such I just couldn't answer it. You could read the constitution, the bylaws. In any international anybody who is part of the international gets certain authority to do certain things and in effect they can do anything that is not prohibited by the international consitution. And you know for example they have their own trial procedures.

eventually that can be reviewed by the International, because that is the same way with a local that isn't a division.

So frankly I wouldn't know how to answer it.

MR. DANAS: In the drafting of this little arrangement, there must have been some relationship in mind, something that the constitution was supposed to create. Can you give me some enlightenment on it.

MR. SCHWARTZ: The form of that question is something I wouldn't know how to answer. The idea was to eliminate a lot of friction between the locals, for example, they were operating under a common agreement.

The idea was to set the stage so that all the collective bargaining agreements could become one so that the pension plans could be merged, so the welfare plans could be merged and things of that sort.

And the only way to do it was to get the various offshore locals together, let them know men walking in and out of different ports has the same rights as any official in any port. He gets the same kind of service that comes with that. There is no longer any situation where the old longshore locals had an independent dues structure.

The small locals would suffer and have to have higher dues. Here the dues of the entire Offshore Division, dues are the same. Dues are set at a minimum by the International, but the whole division sets their dues, they vote on their dues. That is the way the thing generally works up.

When a decision is made with regard to closing ports because of decrees in shipping it's done by the Offshore Division.

If somebody has to be charged, the Offshore Division is charged.

Nobody has been charged in the last 18 years, let alone tried. They have their own meetings and their own affairs, things of that sort. The council pretty much runs the affairs of the Offshore Division and the International is more or less a collective body.

The International in and of itself consists of 30 officials and about a half dozen others, but it functions through the Divisions and locals that are part of it.

That is the kind of thing. Now, you can add on. There are certain minimum safeguards set forth in the International constitution with regard to disciplining and things of that sort. There are certain minimum safeguards where the International constitution says anybody wanted to amend their bylaws has to do it by referendum, you can't do it any other way.

That is the relationship. In that sense everybody is subordinate to the International rules. But the thought of creating divisions would end the problem of having a whole separate officialdom. It is not unusual. Some are International, some have a different kind of structure.

MR. DANAS: Just to summarize, I guess, it seems to me what you were saying is that the Offshore Division, as would be true of the Pilot Division, is independent of the International for certain purposes in certain spheres and in some spheres it is subordinate to the International's constitution?

MR. SCHWARTZ: Yes, and by and large

it is the constitution and also the convention. The convention in turn is limited by the constitution and what is the additional limitation.

In many unions, the National Convention where the delegates are separately elected, have a right to amend the constitution. In this union they can send it out for ratification. It rests on referendum. That is why in our papers we told you we had about seven referendums in different parts of the union since the dispute about the consolidation vote.

That is the way things are done.

So in that sense everything is subordinate to the membership.

Q In 1971, Captain, was there in existence a body called the General Executive Board of the Offshore Division?

MR. SCHWARTZ: It is the Offshore Division Executive Council, that is what it is. That is what the bylaws say. It has to be that.

Q Was there in existence in 1971 an Offshore Division Executive Council?

A When the constitution was adopted. It came in to existence when the constitution was adopted.

MR. SCHWARTZ: And the bylaws.

A And the bylaws.

Q Of course there was a General Executive Board in existence of the International?

A Yes.

Q Do those two bodies have any jurisdiction or duties of involvement with regard to election procedures?

A I don't recall anything they would have done that would have changed the constitution would have had to go out on a ballot.

Q I am referring to the election of officers in 1971.

A I don't recall, but I will look it up. Any minutes are available.

Q In that connection, I would like to set the stage for the search of your records, in a letter you wrote to one L. Burlingame, dated July 6, 1971, you state "In accordance with the bylaws and constitution the Offshore Division Executive Counsel and General Executive Board acted on the procedures which will be followed for the upcoming election. The first, as you know, under the new structure."

I would like a search of your records as well as of the minutes of those two bodies, and I would like you to provide us with specification with regard to what involvement, the extent of the involvement and the areas of involvement those two bodies had in relation to the 1971 election of officers.

MR. SCHWARTZ: We will look.

What date is the letter?

MR. DANAS: The letter is dated July 6, 1971.

Q As of the present structure of the Union, can members of any division other than the Offshore Division vote for any Offshore Division officer?

A Repeat the question. The Offshore Division officers?

MR. SCHWARTZ: You mean outside of the International officers who by virtue of their position, are executive officer and financial officer of the Offshore Division?

MR. DANAS: Besides these. I think we are clear as to that.

A Only in the case -- and when we find it out we stop it -- if a man has membership in two divisions. They are not supposed to. They don't in the Pilot Division and the Offshore Division, because we have a record of everybody by their social security numbers, but, of course, there are people with two social security numbers and people with two different names.

As far as the Union itself goes, you can't do it.

I might mention in the old days to keep peace there were people who belonged to two locals, but there was no way for the International to know that.

Q What you are saying then, so we are crystal clear, other than the three top officers of the Offshore Division, there are no other officers who are voted on or voted for by non-members of the Offshore Division?

A If they are full book members in good standing of the Offshore Division, the vote for officers, either to run or to vote in the Offshore Division.

Q Other than the three top positions.

A That's right.

MR. DANAS: I have no further questions at this point. What I would like to do is adjourn the deposition pending receipt of some of the documents, or of the documents that have been requested and the information that has been requested and at that point it will be clearer to us as to whether any further sessions of the deposition will be necessary.

MR. SCHWARTZ: I will begin to get some of the stuff I have been filing about a year ago. I don't expect it all at once. But now when can I get it?

MR. YOUNG: You are directing the question to me?

MR. SCHWARTZ: I suppose so.

MR. YOUNG: As we indicated yesterday, I am presently going through voluminous documents and I will make a good faith effort to get it to you before the end of this month.

It is enormous.

MR. SCHWARTZ: Let me say this: I appreciate that, that is the first time I got a concrete answer to most anything.

U.S. DISTRICT COURT
FILED
OCT 13 1972
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

JAMES D. HODGSON, Secretary of Labor, U. S. Department of Labor,

Plaintiff,

-against-

INTERNATIONAL ORGANIZATION OF MASTERS, MATES and PILOTS, INTERNATIONAL MARITIME DIVISION, ILA, AFL-CIO,

Defendants.

- x

72 Civ. 5031 (CBM)

The following statements and documents constitute defendant's additional responses to demands for information made by the plaintiff during the deposition of THOMAS F. O'CALLAGHAN herein.

Deposition Page(s) No.	Response
171	Printing $1356.60 Distribution 1862.00 Total $3218.60 See Exhibit O'Cal. "A".
175-175	See Exhibit O'Cal. "B". 1) Lit. referred from Capt. Sheldon directly to AAA. 2) AAA 3) Sometime shortly prior to Nov. 9, 1971. 4) Sometime shortly after Nov. 9, 1971. 5) Mail distribution. 6) Mailing list in possession of AAA as the impartial ballot Agency.
179-180	See Exhibit O'Cal. "C".
184-187	See Exhibit O'Cal. "D".
188	See Exhibit O'Cal. "E".
190	Not yet available. To be provided at a later date.
212-213	See Exhibit O'Cal. "F".
233-235	Capt. O'Callaghan did not attend a Union meeting in Mobile, Ala. in Nov. or Dec., 1971.

E

~~political opponents.* The present officers have served since the election of 1971. Thomas F. O'Callaghan, the current President, also served as President during the prior elective term commencing in 1969, and had been Secretary-Treasurer before then.~~

Referenda since the adoption of the 1970 Constitution have been as follows:

- Referendum in 1971 among the entire membership of the union, amending certain sections of the 1970 Constitution including an amendment to the Constitution constituting an affiliation of the Union with the International Longshoremen's Association. Although the existing Constitution authorized the General Executive Board to act on affiliations, the Union officials felt the matter to be of such importance that it was more properly to be submitted to the membership for their approval by referendum.

- A referendum is now being conducted among all the union's membership on additional amendments to the 1970 Constitution.

- Referendum in 1971 among the members of the former Pilots local creating the Pilots Division, and adoption of their By-laws.

- Referendum in 1971 among the members of certain former Inland Locals creating a partially formed Inland Division consisting of the West Coast and Pacific Regions thereof, and

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~~*Lloyd Sheldon, the chief plaintiff in this lawsuit and the [illegible] witness who testified on behalf of the plaintiffs in this [illegible] before Judge Knapp, was a former President of the Union, and was defeated by the incumbent President, Thomas F. O'Callaghan, not only in the 1971 election, but also in the prior 1969 Presidential election.~~

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adoption of their By-laws.

. Referendum among the members of the Pilots Division on proposed amendments to their By-laws.

. Referendum among the members of the Offshore Division amending the Offshore Division By-laws and providing for a dues increase.

. Referendum among the Offshore Division members 1973 on the ratification of the newly negotiated Master Offshore Division Collective Bargaining Agreement.]

~~In the elections case, the Secretary of Labor's answers to the Union's interrogatories are quite different from the purple prose in the Secretary's moving papers. It should be emphasized that the Union's election of all officers in the past and will be conducted by the American Arbitration Association. Furthermore, there never has been any allegation about any *per se* impropriety of the balloting. The only claim related to the decision not to open ballots that were challenged. These ballots were subsequently opened at the insistence of the Secretary of Labor and did not change the result in a single instance.~~

~~As a further example, it is true that the officials were guilty of using union funds.... The facts for such a somber legal conclusion consisted of the publication of a convention newsletter that contained remarks of the President of the ILA which were adjudged to be of benefit to the incumbent officials.~~

~~Even if an immediate unwinding took place prior to the disposition of the appeal, and the pre-1970 election procedures~~

U. S. DISTRICT COURT
FILED
JUN 16 1975
S. D. OF N. Y.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

---------------------------------------x

JAMES D. HODGSON, Secretary of Labor, U.S. Department of Labor, :

Plaintiff, :

-against- :

72 Civ 5031

INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, INTERNATIONAL MARITIME DIVISION, ILA, AFL-CIO, :

Defendants. :

---------------------------------------x

May 23, 1974
12:30 p.m.

Continued deposition of ROBERT J. LOWEN, taken by plaintiff pursuant to notice dated June 2, 1973, held at the United States Attorney's office, U. S. Courthouse, Foley Square, New York, N.Y., Room 329, before Anthony Mancuso, a shorthand reporter and Notary Public of the State of New York.

APPEARANCES:

PAUL J. CURRAN ESQ.
United States Attorney for the Southern District of New York
BY: JOSEPH P. DANAS,
DENNISON YOUNG, JR.
BOBBY C. LAWYER,
Assistant United States Attorneys

VOL #9

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Q Would you name those fully formed divisions?

A Yes. At this time the two divisions are the offshore divisions and the pilots division.

Q Now prior to the reorganization of the union, there was an inland division, is that still in existence?

A That is not correct.

Q Okay.

Is there now in existence an inland division?

A No.

Q Was there ever in existence an inland division?

A No.

Q What is the status of the inland locals at this time?

A The inland locals have combined to become two semi-autonomous regions.

Q What are those two regions?

A The west coast, the Pacific region; and the Atlantic and Gulf region.

Q In what manner did they effect such combination?

A The membership voted to merge the locals into a region.

Q Approximately how many members are there of the two inland divisions? You didn't refer to them as

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divisions, what did you call them?

A I called them regions.

Q Regions.

A Roughly 1,000 on the west coast and 700 on the east coast.

Q What about the size of the fully formed pilots division, in terms of membership?

A Approximately 700.

Q And the offshore division?

A Approximately 6,000.

Q Now, do either the offshore division or the pilots division have any sub-divisions or area designation within them?

A Yes.

Q With regard to the offshore division, what are those designations?

A We have regions inside of the offshore division too.

Q Would you name those, please?

A It's the Atlantic, the Gulf and the Pacific.

Q What about for the pilots division?

A The pilots division is composed of branches.

Q How many branches exist and would you name them, please?

A Yes.

Q What regions were those?

A Philadelphia, Norfolk, Savannah and Charlston, I believe.

Q Are those also members of the dear departed?

A They were also, dear departed.

Q Do they exist in any form today?

A No.

Q Is there a group in existence today, called the Port of Baltimore?

A The Port of Baltimore? The Port of Baltimore is on the Chesapeake Bay.

Q Not physically; is there a group within your union?

A That's one of our ports, Baltimore.

Q There is a group or a conglomeration of members referred to as The Port of Baltimore, is there not?

A No, there is a physical presence, but there is no member, per se, in a port of Baltimore.

Q I thought, under your new set-up, the offshore division comprised varous ports?

A Yes.

Q What is the relation as it now exists between these various ports and the offshore division?

A The various ports arethe physical presence of the offshore division and provide a physical presence in which any member of the offshore division, regardless of whether he lives in Seattle or Galvaston or New York or Maine, can come into that physical entity and say, "I want a job."

Q Do these ports maintain offices?

A Yes, that's what they're there for.

Q Do they have a staff of officers?

A They have a staff of officers, yes.

Q This is true of each port within the offshore division?

A That's correct.

Q What is the title of the officers of these local ports?

MR. SCHWARTZ: This is all in theoffshore division bylaws and I see you got it on your desk.

MR. DANAS: I will go through it very quickly.

MR. SCHWARTZ: Let me have it and I will show it to you.

Q Can you answer that question?

MR. SCHWARTZ: Let me say this to you:

Article III, on pages 2 and 3, show the layout for the offshore division. It tells you what you have in the different ports.

MR. DANAS: Okay. Mr. Schwartz has directed my attention to Article III, Section I of the bylaws of the offshore division, Masters, Mates and Pilots International, subsection B therefore refers to the fact that each port shall elect a port agent and/or executive assistant port agent and/or assistant port agents.

Q Briefly, Captain, would you describe whatthe duties and functions of the port agent is as they now exist?

A The port agent is responsible for the day to day administration of the port to which he has been elected.

Q Briefly comprising what types of activities?

A Briefly, the function of the port is to serve as a hiring hall for officers to be dispatched under our collective bargaining agreement. They will take -- or the people that work for them will take a job order from a company; will put it up on our shipping board and they will administer the bidding by individual officers to try to get that particular job.

Q Do these port regions or port officers handle grievance procedures?

A Yes.

MR. SCHWARTZ: I'm letting you go pretty far. I don't know of a thing in the complaint that is relevant.

MR. DANAS: We believe it is.

MR. SCHWARTZ: You're going to have to tell me

MR. DANAS: As I believe I mentioned yesterday, with regard to our requested relief here, if we do get a supervised election, there will be questions as to what structure such supervised election will be run under.

MR. SCHWARTZ: If that's the reasons, I am going to instruct the witness not to answer any other question. You will have ample opportunity, if you win this case.

MR. DANAS: I think we are working under time pressure here.

MR. SCHWARTZ: In any event, I am not going to let you ask questions on the assumption that you may win the lawsuit.

MR. DANAS: This is pre-trial discovery.

MR. SCHWARTZ: I understand all that. But I think you have the union's constitution. You have the bylaws and you have asked questions there, that I am going to instruct the witness not to answer any more of these type of questions.

MR. DANAS: Okay.

Q In general terms, the function and duties of the port agent as they currently exist, do they differ from the functions and duties of the old local agents in any way and if so, in what way do they differ?

A They differ in that they no longer have the physical responsibility for generating the revenue that is required to support their port.

Q Where are the revenues generated?

A From the membership as a whole.

Q In other words, under the current set-up, the revenue is funneled from the offshore division to the International?

A No.

Q To where?

A The offshore division to the offshore division.

Q From the local port office of the offshore division?

A That's correct.

Q To the officers of the offshore division?

A That's correct.

Q From there it's allocated among the ports?

A That's correct.

Q Who are currently the officers of the offshore division?

A Which officers?

Q The division officers.

A The division officers, the three International officers of the offshore division. The offshore division has three vice president and port agents.

Q The three International officers are Captain O'Callghan as President, yourself as secretary-treasurer and Mr. Caldwell?

A Captain Caldwell.

Q Captain Caldwell is vice president?

A Yes, executive vice president.

Q Those three persons are also President, executive vice president and secretary-treasurer of the offshor division, is that correct?

A That's correct, but I don't think it's in really those terms. Yes, I guess it's correct.

Q You also mentioned with regard to the offshore division that they were executive vice presidents?

A No, I said vice president. Captain Caldwell is the executive vice president.

Q How many vice presidents are there?

A Three.

Q Who are those persons, currently?

A Atlantic vice president is Captain Joseph

Guyer; the Gulf vice president is Captain Robert Jones; and the west coast vice president is a Captain Orion Larsen.

Q How or in what manner are those last three gentlemen, the vice presidents, chosen?

A They were elected by the membership.

Q Which membership?

A The membership of their particular local at the time the '71 election was generated.

Q Captain Guyer was chosen by the New York local as its president?

A No. He was formerly the president of the New York local. He is the port agent.

Q I'm referring to 1971; he was chosen as the New York president?

A No.

Q Was there a president of the New York local in 1971?

A No.

Q He was chosen as the port agent?

A Correct.

Q He automatically became the Atlantic offshore vice president?

A That's correct.

Q The same thing with Captain Jones in the Gul

area?

A Yes.

Q And Captain Larsen in the Pacific area?

A That's correct.

Q Now, in general, what are the functions of the officers -- well, let's take the three top officers, yourself, Captain O'Callghan and Captain Caldwell, with regard to the off shore division.

A Which do you want first?

Q All three, in general, what are their duties, responsibilities and functions, with regard to the offshor division?

A The president of the organization is charged with all of the duties and responsibilities of all fully formed divisions. He is really the prime negotiator for the offshore division; is the one who sets the perameters for what's to be done; guides the secretary-tre surer, the executive vice president and direct the activities of the vice presidents in their particular regions.

Q What about your duties with regard to the offshore division?

A My duties are : I am the contract enforcement officer for all of our contracts and I am also the chief fiscal officer of the division.

Q With regard to finances of the offshore division, what exactly do you do; what do you determine with regard to finances?

A I have a controller and four employees who assist the controller. I oversee the controller's work and insure that the due revenues are collected properly, that the ports are notified when people fall in arrears in their dues and insure that their checking accounts be properly replenished so that they can pay for the administrative expenses at their particular ports.

Q Do you also disburse funds to the various ports?

A Yes, I said we do that.

Q For what purpose?

A For administrative expenses. They maintain a checking account in each port.

Q Do you determine a budget for the ports?

A The offshore division bylaws called for --

MR. SCHWARTZ: The question is:

Do you determine the budget.

THE WITNESS: No.

Q Do any of the officers, Captain O'Calighan, yourself, Captain Caldwell, determine budgets for ports in the offshore division?

A No.

Q How are those budgets determined and by whom?

A There is no budget determined, per se.

Q What controls -- does your office compose with regard to the disbursement of monies to the port regions?

A The controls that we have -- most of the costs are fixed costs. The controls that we have are primarily in respect to expense accounts to determine that the expens accounts are proper and sending them back when necessary or asking for explanations so that they are properly supported.

Q With regard to the ports, is there any play or any independent judgment with regard to how much they can spend on their part or is it composed by the offshore division officers?

A Well, the amount of money they can spend is limited by the amount of money they are remitted by the offshore division.

Q For any given fiscal year, when are they informed how much they will be remitted by the offshore division?

A They are remitted what is necessary to keep their expenses to operate port.

Q Let's assume a fiscal year begins January 1.

MR. SCHWARTZ: Part of the problem is the way you're asking the question and I know it is not intentional and I know that this stuff is complicated. What the witness is trying to explain to you is that there are certain expenses that are fixed. Salary is set, rent is sent, staff expenses, like the secretary, it's set. If there's any expense beyond that, it is almost invariably in the form of an expense account. What they are doing is they are sending money so that they can meet these fixed salaries and take care of those things. That's basically all they are doing.

MR. DANAS: I thank you for the explanation.

Q Based on Mr. Schwartz's explanation, let's assume in year 1, fixed expenses came to "X" amount of dollars and the local port foresees or would like to build up salaries for the following year or put on a new officer which would up salaries or would like to expand their --

MR. SCHWARTZ: You got several things that they can't do, you're asking, and there are several things that they can do.

MR. DANAS: Okay. I'll go through them one by one.

Q Can they request that their officers' salaries be increased for the following year?

A No.

Q When, prior to the following year, are they informed as to what the total salary role will be?

A Their salary remains fixed until it is changed by a membership referendum.

Q What about rentals, rents?

A Rentals? We have leases; we sign a lease so we know what the rentals are going to be.

Q Who signs the lease?

A Either myselfor sometimes the individual port officers.

Q When a lease is up, do you go in and negotiate a new one?

A I have.

MR. SCHWARTZ: I'm having the same problem. I'm trying to figureout how this is relevant to anything you have in your complaint.

MR. DANAS: I will cut it short.

Q I gather that the officers are still chosen by the local membership, is that correct?

A No.

Q How are the individual port officers chosen?

back in August of '71?

A Yes.

Q And in September of '71?

A Yes.

Q Now, are you testifying here today that these lists left the office, whether it be to the AA or anywhere else, without your knowledge or say-so?

A That's what I'm testifying, yes.

Q You must have some recollection as to who overrode your balliwick, so to speak.

MR. SCHWARTZ: I object to the form of the question.

Q Do you have any knowledge as to who did forward that list?

A No.

Q Would your records indicate who forwarded that list to the AAA?

A I don't know.

Q Would you check those records?

A Well --

Q In August of '71, approximately how many names were on that membership role?

A Which membership role?

Q The one that you have been describing, that you updated, emanated from the locals.

A Approximately 8,500.

Q Now, is it conceivable that a list of 8,500 names left the International office without any records having been kept?

A No.

Q There are records in existence which would reflect when --

A I assume so.

Q In August of 1971, besides yourself, which officers of the International were working out of the New York office at 39 Broadway?

A Captain O'Callghan.

Q Who else?

A No other officers.

Q Now, besides yourself and Captain O'Callghan, whom did you employ in terms of an office staff in August of '71?

A Approximately eight people.

Q Would you name them, please?

A There was a Mr. Kenneth Camisa, who was director of research; two secretaries, that worked with him, I don't remember what their names were, they are boating; the officer manager who is a Mrs. Vera Watson;

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U. S. DISTRICT COURT
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UNITED STATES DISTRICT COURT

SOURTHERN DISTRICT OF NEW YORK

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ORIGINAL

JAMES D. HODGSON, Secretary of Labor, U. S. Department of Labor,

Plaintiff,

vs.

INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS, AFL-CIO,

Defendants.

NO. 72 CIVIL 5031 CSm

DEPOSITION OF

CAPT WILLIAM CALDWELL

November 4, 1974

SCHILLER & COMBS REPORTING SERVICE
CERTIFIED SHORTHAND REPORTERS
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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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JAMES D. HODGSON, Secretary of Labor, U. S. Department of Labor,
Plaintiff,
vs.
INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS, AFL-CIO,
Defendants.

NO. 72 CIVIL 5031

BE IT REMEMBERED that, pursuant to Notice, and on Monday, November 4, 1974, commencing at 10:30 o'clock a.m. thereof, in Room 16201, 450 Golden Gate Avenue, San Francisco, California, before me JUDITH A. BEAMER a Notary Public in and for the County of San Francisco, State of California, personally appeared

CAPT WILLIAM CALDWELL

called as a witness by the plaintiff.

PAUL J. CURRAN, U. S. Attorney, U. S. Courthouse, Foley Square, Room 324, New York, New York 10007, represented by BOBBY C. LAWYER, Assistant U. S. Attorney, appeared as Counsel for the plaintiff.

Law Offices of KESSLER & DRASIN, 10880 Wilshire Boulevard, Suite 1806, Los Angeles, California 90024, represented by LAWRENCE DRASIN, Esquire, appeared as Counsel for the defendants.

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MR. LAWYER: The time is 10:30 a.m., and we are at the offices of the United States Attorney, 450 Golden Gate Avenue, in San Francisco, California, to take a deposition of three people, in the action of Secretary of Labor against the International Organization of Masters, Mates & Pilots. The number of the case is 72 Civil 5031, and the Complaint in this case was filed in the United States District Court for the Southern District of New York.

This deposition is noticed for October 31, 1974 at 10:30, at our present location; however, it was continued by court order of United States District Judge Constance Baker Motley to be taken on November 4, 1974, which is today's date.

Also present at this time is myself and Brian P. O'Hanlon of the Department of Labor, as well as Counsel, whose appearance is noted. In addition, all three of the witnesses who are to be deposed today are physically present in the room: William Caldwell, Orion Larson and George Tuttle, Jr.

And, let the record reflect that the plaintiff -- that is, through me, Bobby C. Lawyer, Assistant United States Attorney, Southern District of New York -- requested of the defendants' Counsel, Mr. Drasin, that only the witness who is being deposed should be present; and Mr. Drasin stated that this was not acceptable, that the defendants' position is that all these witnesses are party witnesses, and he would not agree to having anyone excluded, that is, of these three people, unless there was a court order to such effect.

I indicated that since we were a long ways from the Courthouse where this Complaint was filed, that it seemed self-evident that the only purpose of having the witnesses present, all three witnesses present, was so their testimony could possibly be confirmed.

And, Mr. Drasin indicated that, in part, was the point of having all witnesses present at one time, as well as to save time.

And, accordingly, on behalf of the plaintiff, we are going to proceed because of the problem of time, in taking other depositions in Seattle. And, I guess we will conclude today. We will proceed with these witnesses being present, rather than responding, wasting any time in court. However, we do object.

MR. DRASIN: I have nothing further to add to that statement.

MR. LAWYER: I do want to add one more thing. Mr. Drasin -- correct me if I am wrong -- my understanding is that you were directed by Mr. Marvin Schwartz, in New York, to oppose any separation of the witnesses who are being deposed, that they all should be present for the deposition.

MR. DRASIN: I don't think it is proper for me to go into whether I am directed by Mr. Schwartz or just how that has come about. At this proceeding, I am Counsel for the defendants, and it is my determination of the law, and I would take responsibility for it.

MR. LAWYER: For the purpose of representation in this case, I am concerned if you say you are representing the defendant now. As I understand, you have stated that you are representing them; but as far as I know, Mr. Marvin Schwartz is representing them, and he engaged you to sit in for him in this situation.

MR. DRASIN: That is correct, he retained us. He is attorney of record, and we are just representing the defendants, through his office, at this hearing. But, I will not make any representations as to whether Mr. Schwartz directed me to take this position or whether this is my own independent judgment on it. Mr. Schwartz directed me to use --

MR. LAWYER: I think the record should reflect, even though you don't want to state it on the record, I did ask you earlier before the deposition, and you indicated Mr. Schwartz had indeed advised you to keep the witnesses together.

MR. DRASIN: I am not sure that is correct. All I am stating here now is that it was my judgment that the law, as it now stands, gave these witnesses the right to be present in all stages of the proceedings because they were in effect party witnesses; and, it was on that basis that I made that determination, and it was not Mr. Schwartz's determination, but it is mine.

WILLIAM CALDWELL

having been first duly sworn, testified as follows:

EXAMINATION BY MR. LAWYER

Q. Mr. Caldwell, would you state your name for the record and spell it, please.

A. William, W-i-l-l-i-a-m, Caldwell, C-a-l-d-w-e-l-l.

Q. Give us, first, your residential address, please.

A. 324 Southeast 83rd Avenue, Portland, Oregon.

Q. And what is your business address?

A. One California Street, San Francisco.

Q. And what do you do for a living?

A. I am an official of the International Organization of Masters, Mates & Pilots.

Q. What specific duty do you have?

A. International Executive Vice-President.

Q. Would you tell us briefly what your duties are as International Vice-President.

A. I am Executive Vice-president under the supervision of the International President, and I relieve him in the event he isn't in attendance at any of the conventions and Executive Board meetings and such.

Q. Now who is the President?

A. The President is Thomas F. O'Callaghan.

Q. Mr. O'Callaghan is based in New York, primarily? Is that correct?

I might also state for the record that the Constitution sets forth the duties and authority of the General Executive Board, as well as the duties and authority of the various officers of the union; and those -- that document speaks for itself.

(Discussion had off the record.)

MR. DRASIN: Do you want to correct your testimony, where you previously testified that the General --

THE WITNESS: Yes, I do.

MR. LAWYER: Would you go ahead and make the correct statement.

MR. DRASIN: How often does it meet?

THE WITNESS: I feel we are in compliance with the International Constitution. We have conventions; and prior to the conventions, they usually hold a General Executive Board meeting and once in between.

MR. LAWYER: Q. Do you hold any position with the Offshore Division that you mentioned earlier?

A. Yes, by the International Constitution, I am the Executive Vice-president, one of the executive officers of the Offshore Division.

Q. Now, how did you get that position, by appointment or election?

A. By election.

Q. And what election was that?

A. The International Election -- Executive Vice-President.

We, the three International officials, are the executive officers of every duly formed division.

Q. Is that to say there is no separate election for those two separate positions?

A. No.

Q. It is one election?

A. Yes.

Q. And by virtue of becoming -- I'm sorry, by virtue of being elected to your position with the International, you automatically descended to position with the Offshore Division?

A. Yes.

Q. Is there a separate salary?

A. None.

Q. What are the duties of your position, of the position that you hold within the Offshore Division?

A. The same duties as Executive Vice-president. We are the executive --

Q. Executive Vice-president of what?

A. Of the International. We are the executive officials of each duly formed division.

Q. Well, what is the difference in the duties -- between the two duties, if any? Your position with the International and your --

A. The Offshore Division has ~~to have~~ different [illegible] bylaws from the other subordinate bodies.

Q. Do you do anything differently, by virtue of being in your position with the Offshore Division, that you do not do by virtue of being an officer of the International?

A. I don't understand the question.

MR. LAWYER: Let's go off the record for a minute.

(Discussion had off the record.)

MR. LAWYER: Q. Let's go back on for a minute.

Mr. Caldwell, as I understand it, you have two separate titles within the union. Is that correct? That is, with regard to the International office that you hold and the Offshore office that you hold. Is that correct?

A. Well, the International --

Q. Just answer yes or no in that regard.

A. I don't understand what you are saying, two separate jobs.

MR. DRASIN: He said "two separate titles."

MR. LAWYER: Q. "Two separate titles" is what I believe I said.

What is your title with the International?

A. International Vice-President.

Q. What is your title with the Offshore Division?

A. We are the executive officers of the Offshore Division.

Q. Not "we." What are you?

A. I am an officer, an executive officer, of the Offshore Division.

Q. Earlier you have testified as to what your duties were, in brief, as an officer with the International. Now, please tell us what were your duties as an executive officer with the Offshore Division.

A. The Offshore Division Bylaws -- they are reflected in that document (indicating).

Q. Do you know what you do, without looking at that document? Just tell us what you do, as distinguished from --

A. I would like to refer to the document, the Offshore Division Bylaws.

MR. DRASIN: Do we have that?

(Document handed to the witness.)

MR. LAWYER: May the record reflect that a copy of the Offshore Division Bylaws was produced and is being examined by the witness.

THE WITNESS: Section 2. Duties of officers. Offshore International. Executive Vice-president.

"It shall be the duty of the International Executive Vice-president to assist the International President in the discharge of his duties, as outlined in Section 1 of this Article, and such other duties as the organization may require. The International Vice-President shall act for the International

President when the latter is not able to perform the duties of his office."

MR. DRASIN: That is his answer.

MR. LAWYER: Q. May I see the statement that you refer to. Is it Section 4?

MR. DRASIN: No, Section 2, I think it is.

MR. LAWYER: Article VI, Section 2 of the Bylaws of the International Organization, dated October 1, 1970.

This is what you referred to?

MR. DRASIN: Yes, the Bylaws of the Offshore Division.

MR. LAWYER: Q. Are there any duties, sir, that you exercise, or any problems that come up with regard to the Offshore Division, that are distinct from any duties that you exercise with the problems that come up with regard to your position as an officer of the International? That is, is there anything separate and distinct that you do with regard -- that is peculiar to one or the other position?

A. No. Only the International -- the executive officers of the International are also [illegible] in the bylaws, the Pilots Division. The Offshore Division, the duly formed division -- they are also the executive officers of those divisions. Right now the different divisions have different problems.

Q. Give us a sample of a problem that is different for the Offshore Division as distinct from any problem that may come up with regard to the International.

A. Negotiations is one.

Q. Any others that you know of?

A. And then there's problems with respect to the elections and the -- it was in our transition period, in consolidating from local to consolidation; yes.

Q. What kinds of licenses do you hold; that is, what kind of seaman's license, first?

A. Master of Oceans, unlimited.

Q. When you say "Master of," that means you could serve as a master on most any ship?

A. Yes.

Q. Do you in fact sail at all?

A. I have been an official of the organization since 1962. I haven't been -- sailed since then, but my license is a valid license.

Q. What type of license, if any, was required in order to qualify you to run for your position with the International office?

MR. DRASIN: At what time, which election?

MR. LAWYER: Q. With regard to the last election of '71, sir.

A. What type of license?

Q. Yes.

A. A valid license.

Q. To run for the position that you hold with the meeting. You are referring to the meeting of the Board in Miami that we referred to earlier in the deposition?

A. Yes.

(Discussion had off the record.)

MR. LAWYER: Q. There was a discussion off the record, and what we will do now, because it is so involved -- Mr. Drasin has agreed to make a statement on the record; and we will ask Mr. Caldwell to adapt that statement or to qualify it.

MR. DRASIN: In order to run for a position as an officer of the Offshore Division, you must hold a license because all members in good standing of the Offshore Division are licensed officers; however, it is theoretically possible to run for an International office without holding a license if you are a member in good standing of, say, the Inland Division, where those members do not necessarily hold licenses. You then, by virtue of your position as an International officer, become an executive officer of the Offshore Division, without a license.

MR. LAWYER: Q. Mr. Caldwell, did you hear the statement that Mr. Drasin just made?

A. That's my understanding, yes.

Q. You understood what he just said?

A. Yes.

Q. And do you agree that what he said accurately reflects the situation?

A. It is my understanding.

Q. That you could become an executive officer of the Offshore Division without having a license; that it is possible within the framework?

A. It is very unlikely; but a member, he could run for International office and, if elected, would become --

Q. Let's go back now to Exhibit A that you reviewed and which you indicated was prepared at the meeting of the GEB in Miami. Tell us the mechanics as to how this document was prepared. That is, did people vote, for instance, on the individual provisions that went into it; that is, the members of the GEB?

A. Well, if my memory -- if I recall right, this was composed by the officers of the various locals, and they were familiar with their bylaws; and it was approved by the General Executive Board.

Q. How does the General Executive Board decide to take action or not to take action? Is that by vote?

A. Yes, the International Chairman of the General Executive Board ---

Q. Are there any offices below that, the chairmanship? That is, with regard to the GEB?

A. No, that's the Chairman -- just the Chairman.

Q. Now, how are decisions made? Are they made by the Chairman, after discussion?

A. No, by action of the majority of the General

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

W. J. USERY, Secretary of Labor, :
United States Department of Labor,
:
Plaintiff, :

-against- :

72 CIV. 5031

:
INTERNATIONAL ORGANIZATION OF
MASTERS, MATES AND PILOTS, :
INTERNATIONAL MARITIME DIVISION,
ILA, AFL-CIO, :

1/4/77

:
Defendant.
- -x

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CONSTANCE BAKER MOTLEY, D. J.

MEMORANDUM OPINION
On
MOTION FOR SUMMARY JUDGMENT

This action was brought by the Secretary of Labor of the United States Department of Labor pursuant to Section 402 of the Labor Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. § 482. In the complaint, plaintiff alleges that the defendant union during the course of its 1971 election of officers committed various violations of

Section 401 of the LMRDA, 29 U.S.C. § 481, which therefore require that the election be overturned. Accordingly, the complaint asks that this court void the 1971 election of officers of the International Organization of Masters, Mates and Pilots ("IOMM & P") and order a new election subject to the supervision of the Secretary of Labor.

While the complaint alleges a number of violations of 29 U.S.C. § 481, for purposes of the instant motion for summary judgment plaintiff has limited consideration to five claimed violations:

1) The preparation and August 19, 1971 mailing by the IOMM & P of the "60th Convention Newsletter on the Resolution of Affiliation of the IOMM & P with the ILA" ("Newsletter"), which plaintiff contends constituted campaign literature prepared in violation of 29 U.S.C. § 481(g) and distributed in violation of 29 U.S.C. § 481(c);

2) The preparation and November 26, 1971 mailing by the IOMM & P of another document entitled "All Constitutional Amendments and Resolution of the 60th Convention Ratified — Affiliation of IOMM & P as the International Maritime Division of the ILA (AFL-CIO) Affirmed," which plaintiff similarly contends to be campaign literature distributed in violation of 29 U.S.C. §§ 481(c) and 481(g);

3) The election procedure followed in the 1971 election of the IOMM & P Offshore Division Vice-Presidents for the Atlantic and Gulf areas, which allegedly, in violation of various provisions in 29 U.S.C. § 481(e), prohibited many members in the Offshore Division's Atlantic and Gulf areas from participating in any way in the selection of said two Vice-Presidents;

4) The failure to mail ballots within 30 days after the close of nominations for the International and Offshore Division offices in the 1971 action, contrary to Article V, Section 8(d) of the IOMM & P Constitution, and therefore contrary to 29 U.S.C. § 481(e) of the LMRDA which provides that an "election shall be conducted in accordance with the constitution and by-laws of [the labor union] insofar as they are not inconsistent with the provisions of this chapter"; and

5) The failure on the part of Local 88 (now the Port of New York) to comply with its bylaw that "[a] certified mailing list of all members of Local 88 shall be made available at cost to all candidates, provided however that any postage charges shall not be billed to this organization," which, if proven, also constitutes a 29 U.S.C. § 481(e) violation, as in item 4 above.

Defendant in turn has itself moved for summary judgment or, in the alternative, for partial summary judgment. The union's independent motion for summary judgment seeks to dismiss the complaint on the ground that it is moot, in view of the intervening election conducted by the defendant in 1974[1] and the facts and circumstances surrounding such election. This is also the position taken by amici curiae Frank T. Scavo, Gerald Johnson and Timothy Brown, who, as candidates in the 1974 election, challenged the incumbents who had been elected in 1971, with the result that Scavo and Johnson replaced such incumbents in the position of President and Executive Vice-President of the IOMM & P.

Defendant's alternative motion for partial summary judgment seeks dismissal of certain alleged violations of 29 U.S.C. § 481 described in the plaintiff's complaint, but not urged by him in his motion for summary judgment currently under consideration. In addition, defendant has cross moved for summary judgment as to the violation alleged to have occurred in connection with the 1971 election of the IOMM & P Offshore Division Vice-Presidents for the Atlantic and Gulf areas.

For the reasons set out below, this court has decided to grant plaintiff's motion for summary judgment, thereby voiding the 1971 election of IOMM & P officers, and accordingly orders that a new election be held under the supervision of the Secretary of Labor. Defendant's motions are in effect thereby mooted. In reaching this conclusion, the court has had to make a series of preliminary determinations which will now be considered seriatim.

Exhaustion of Remedies

A threshold question raised by defendant is whether or not union members who complained to the Secretary of Labor regarding the 1971 election, thereby triggering this action, properly fulfilled the exhaustion of remedies requirements set out in 29 U.S.C. § 482. Section 482(a) requires a complaining union member to file his complaint with the Secretary within one month of having exhausted remedies available under the constitution and bylaws of the union or within one month after invoking the available remedies without obtaining a final decision within three months after their initial invocation. In the instant case, 16 complaining members, through their attorney, Burton Hall, wrote to the General Executive Board, the final appellate body of the union, setting forth their complaints on January 19, 1972. The General Executive Board met on January 25 and 26, 1972 to consider these appeals, and by letter of February 29, 1972, postmarked that date and received March 2, 1972, the union advised the complaining members through Burton Hall that their appeals had been denied on January 26, 1972. The members thereafter filed their complaints with the Secretary on March 29, 1972, within one month of the mailing and receipt of the February 29, 1972 letter.

Defendant now contends that the complaints should have been filed with the Secretary by February 26, 1972, one month after the actual decision by the General Executive Board. Defendant alleges that the complainants were aware that the General Executive Board was meeting on January 25 and 26, and therefore implies that they knew or should have known that some action was taken on their complaints at that time. Defendant does not allege that complainants actually were notified. Given these circumstances, the court finds that the complainants cannot be held to have exhausted all internal remedies until actual formal notification that the appeal was denied. To decide otherwise would place an undue burden on those invoking the protections afforded under 29 U.S.C. § 482. A union — as did defendant union here — could hold off notifying complainants of a disposition in their case until after a month had elapsed, thereby precluding them from bringing such action to the Secretary of Labor, unless through their own efforts they had discovered and acted upon the union's disposition. Certainly such a procedure does not comply with the Supreme Court's mandate that "unions [are] expected to provide responsible and responsive procedures for investigating and redressing members' election grievances." Wirtz v. Local No. 125, Laborers' International Union, 389 U. S. 477, 484 (1968). Nor does it comport with the admonition of the Second Circuit, in affirming a decision rendered by this court, that "procedural perversion of the exhaustion requirements of § 402(a) will not be permitted." Hodgson v. Liquor Salesmen's Union, Local No. 2 of State of N. Y., 444 F.2d 1344, 1350 (2d Cir. 1971). In that case, defeated candidates were held to have successfully exhausted their remedies, though through circumstances beyond their control — a mail strike — they had been unable to file an appeal with the union within the brief time allotted by the union constitution.

In Shultz v. Radio Officers' Union of United Telegraph Workers, 344 F.Supp. 58 (S.D.N.Y. 1972), Judge Pierce was faced with a situation analagous to the present action. In that case, defendant union argued that the complainant had not timely filed his complaint ("intention to appeal") with the union within 10 days as a union constitutional provision required. The union argued that the complainant's December 26, 1969 appeal was untimely because the election ballots had been counted December 1, 1969. The complainant argued that he had not been made fully aware of the final results until December 26, 1969. While the court ultimately found the 10 day provision to be inapplicable, it went on to find the complaint timely filed under such provision nevertheless. Judge Pierce specifically found that the union "did not communicate this information [election results] to [the complainant] in formal notice at any time prior to December 26, 1969." 344 F.Supp. 67. He noted that "[t]he responsibility for Smith's [the complainant] lack of knowledge of the election results rests with the ROU [the union]. Thus the defendant failed to trigger the running of the 10 day period. . . ." 344 F.Supp. 67.

In the instant case, the running of the one month period prescribed in 29 U.S.C. § 482 was similarly triggered by the letter of February 29, 1972, notifying complainants of the General Executive Board's decision. A complaint was filed with the Secretary of Labor within one month thereafter, and thus the exhaustion of remedies requirements were duly fulfilled.

Mootness

Another argument put forward by defendant union, which serves as the underpinning of its summary judgment motion, is that the present action is moot and ought to be dismissed, in view of the intervening election conducted by the defendant and the facts and circumstances surrounding such intervening election. This is also the theory put forward by the three amici curiae appearing in this case, each of whom was a candidate in the 1974 election, and two of whom successfully unseated incumbents who had been elected in the 1971 election.

Defendant union argues that the staging of a new election under the Secretary's supervision would be unnecessary and redundant. It maintains that none of the defects alleged to have affected the 1971 election were repeated in the 1974 voting. It maintains further that any possible taint resulting from 1971 irregularities had been eradicated by the time of the 1974 election, citing the fact that a large majority of those candidates running on the slate of President Thomas O'Callaghan, which had been victorious in 1971, were defeated in the 1974 voting.

Even assuming that none of the irregularities alleged to have taken place in the 1971 election were repeated during the 1974 election — which is not a question properly before this court at this time[2] — the court is unable to conclude that no taint remained from the 1971 violations themselves. In Wirtz v. Local 153, Glass Bottle Blowers Ass'n, 389 U. S. 463 (1968), the Supreme Court stated unequivocally that the statutory scheme to remedy election violations by a supervised election would be unfulfilled by "the happenstance intervention of an unsupervised election." 389 U. S. 474. The Court continued:

> "The notion that the unlawfulness infecting the challenged election should be considered as washed away by the following election disregards Congress' evident conclusion that only a supervised election could offer assurance that the officers who achieved office as beneficiaries of violations of the Act would not by some means perpetuate their unlawful control in the succeeding election." 389 U.S. 474.

Nor can the defendant union rely on the fact that a majority of those elected in the 1971 election were unseated in 1974, since, as the Supreme Court stated, the purpose of the scheme set up by the LMRDA was not "merely to protect the right of a union member to run for a particular office in a particular election. . .for Congress emphatically asserted a vital public interest in assuring free and democratic union elections that transcends the narrower interest of the complaining union member." 389 U. S. 475.

Congress intended to guard against a multiplicity of influences which the results of a tainted election may have on subsequent union activities. In this case, for example, the results of the 1971 election may not only have allowed incumbents to have maintained a personal advantage for the 1974 election but also may have prevented others from rightfully developing the same benefits of incumbency. Others, too, may have withheld their candidacies in 1974 preferring to await an election that was supervised by the Secretary of Labor. In all respects the day to day decisions of the union leadership may have been different over the last three years had other officers been elected in 1971, and such differences may have led to different results in 1974. Just because incumbents do not win re-election does not mean that the subsequent unsupervised election was not in some way affected by the results of the challenged election. The possible influences on the outcome of the 1974 election are incalculable and the only way to guard against them is to have the remedial election supervised by the Secretary. A supervised election guards against much more than just incumbents flaunting their incumbency at the time of the subsequent unsupervised election.

Burden of Proof and Appropriateness of Summary Judgement

The standards to be applied by the court in determining the appropriateness of the supervised election remedy are set forth in Section 402(c) of the LMRDA, 29 U.S.C. § 482(c):

> " (c) If, upon a preponderance of the evidence after a trial upon the merits, the court finds—
>
> * * *
>
> (2) that the violation of Section 481 of this Title may have affected the outcome of an election,

> the court shall declare the election,
> if any, to be void and direct the
> conduct of a new election under supervision of the Secretary. . . "

It is clear from the statute that a preliminary determination which must be made by the court before ordering a remedial election is that a violation of 29 U.S.C. § 481 has indeed taken place. This in itself does not suffice, however, since the statute requires an additional finding that such violation "may have affected the outcome of an election." In the case of *Wirtz v. Hotel, Motel & Club Employees U., Local 6*, 391 U. S. 492 (1968), the Supreme Court considered extensively the burden of proof which should be applied in determining whether or not this finding can be made. In its decision, the Court articulated the principle that a proved violation of Section 481 establishes a *prima facie* case that the violation "may have affected the outcome" of the election and that the only way a defendant union may overcome such a *prima facie* case is to prove that the violation did not affect the outcome of the election.

In that case, the Secretary alleged and the Supreme Court so held, that a bylaw of the defendant local limiting eligibility for major elective offices to union members who held or had previously held certain elective office was not a "reasonable qualification" to hold office as prescribed in 29 U.S.C. § 481(c) and that the enforcement of the bylaw may have affected the outcome inasmuch as it denied members the opportunity to hold elective office. The Supreme Court then ordered a new election held under the Secretary's supervision.

The Court examined the factors considered by the district court and reasoned that the factors presented by the defendant union did not constitute evidence which met the prima facie case established by the violation itself:

> "None of the factors relied on is tangible evidence against the reasonable possibility that the wholesale exclusion of members did affect the outcome. Nothing in them necessarily contradicts the logical inference that some or all of the disqualified candidates might have been elected had they been permitted to run." 391 U.S. 508.

Thus, once a Section 481 violation has been demonstrated, a very substantial burden falls upon a defendant union. It must show by a preponderance of the evidence that the particular violation did not affect the outcome of the election. Until it does so, the presumption remains that such violation might have had an effect on the results, and this presumption of mere possible influence suffices to warrant a new supervised election.

This burden on the union is so great as to be insurmountable in some cases. For example, in Wirtz v. Local 40, 366 F.2d 438 (2d Cir. 1966), the Second Circuit considered an election in which it found that some union members were deprived by the union constitution of a "reasonable opportunity" to become candidates for union office contrary to § 481. Although the case was ultimately dismissed on grounds of mootness, the court did consider the burden involved in determining the actual effect of the violation on the election results. The court ultimately decided that "there can be no tangible evidence available of the effect of this exclusion on the election." 366 F.2d 443. This court reached the identical conclusion with regards to a fact pattern very similar to that in this case.

In Hodgson v. Liquor Salesmen's Union, Local No. 2 of State of New York, 334 F.Supp. 1369 (1971), aff'd 444 F.2d 1344 (2d Cir. 1971), this court considered union journals published just prior to an election and found them to contain statements designed to promote the candidacy of incumbents in violation of 29 U.S.C. § 481. There, too, the court found that "'there can be no tangible evidence available' of the effect of the violation." 334 F.Supp. 1369 (1971).

In both of the above cases, the courts found that there was a "reasonable probability" that the violations had affected the outcome of the elections in a way sufficient to warrant invalidation of the elections (although this was not the ultimate resolution of Wirtz v. Local 40 because of a mootness issue.). An application of the prima facie principle articulated by the Supreme Court in Wirtz v. Hotel, Motel & Club Employees U., Local 6, supra, would make even this separate finding of "reasonable probability" unnecessary, in cases where there is insufficient evidence available one way or the other as to the effect of a proven violation of 29 U.S.C. § 481 on an election. In such cases, the contested election must be invalidated.

A question which arises from this analysis is the appropriateness of summary judgment in those cases where it can be shown that there is no genuine issue of material fact either as to the commission of a 29 U.S.C. § 481 violation or as to the inability of the union to produce evidence sufficient to overcome the presumption that such violation may have influenced the results of the election at issue. The relevant statute, 29 U.S.C. § 482(c), does, it is true, specify that the court is to act "upon a preponderance of the evidence after a trial upon the merits." (emphasis added). In interpreting this provision, however, the courts have generally concurred that summary judgment is not precluded. Brennan v. Local U. No. 639, Int. Bro. of Teamsters, etc., 494 F.2d 1092 (D.C. Cir. 1974); Hodgson v. District 6, U.M.W., 474 F.2d 940 (6th Cir. 1972); Schultz v. Independent Employees Union, 62 L. C. ¶10, 869 (E.D. Wisc. 1970); Wirtz v. Local 1622, Carpenters, 285 F.Supp. 455 (N.D. Cal. 1968). Contra: Hodgson v. District 5, U.M.W., 68 L.C. ¶12, 867 (W.D. Pa. 1972). In the only case from this circuit cited by either party as relevant to this particular question, Judge Lasker had no qualms in granting summary judgment where union funds were used to distribute material found to be campaign

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literature. Brennan v. American Guild of Variety Artists, AFL-CIO et al., Civ. 74-3004 (S.D.N.Y. 1974). However, the sole remedy afforded in that decision was apparently a declaratory judgment, rendering it largely irrelevant to present considerations.

This court ultimately adopts the reasoning put forward on this question by the Circuit Court for the District of Columbia in Brennan v. Local U. No. 639, Int. Bros. of Teamsters, etc., supra. There, the court, upon examining the legislative history of the LMRDA and the tradition of judicial interpretation of congressional labor legislation, concluded that the essential feature regarding adjudication under 29 U.S.C. § 482(c) was that a new election could only be ordered by an Article III Court acting according to the procedural panoply incumbent on such a court. The court concluded that "it would be sheer folly to require the expense and delay of a trial when other methods of resolution are available" and noted that "Rule 56 itself has strict requirements which must be satisfied before summary judgment can be granted." 494 F.2d 1096. This court concurs.

The Alleged Violations

It having been decided that summary judgment is at least theoretically available in the instant case, it remains for this court to consider the particular violations alleged by the Secretary to determine whether any of them actually warrants such a resolution.

On August 19, 1971, the IOMM & P mailed to each of its members a document entitled "60th Convention Newsletter on the Resolution of Affiliation of the IOMM & P with the ILA." The cost of the preparation, duplication and distribution of this Newsletter was paid for with monies received by the IOMM & P by way of dues, assessments or similar levy, and the union expended more than $3,000 on the preparation, duplication and distribution of the Newsletter. It was sent to approximately 10,400 members in a mailing done using addresses on file at the union International headquarters on a computerized list. Although the union purports that the Newsletter deals only with its merger with the International Longshoreman's Association, the Secretary maintains that the document contains campaign statements vilifying the opposition and praising incumbents. Therefore, the Secretary alleges that the Newsletter involves three separate union violations of the prohibitions of 42 U.S.C. § 481:

1) By preparing and distributing this campaign literature using union resources, the union violated § 481(g);

2) By distributing the Newsletter using its lists of members, the union did not "refrain from discrimination in favor of or against any candidate with respect to the use of lists of members" in violation of § 48[illegible] and

3) By failing to offer "similar distribution at the request of another bona fide candidate," the union violated § 481(c) in another respect.

These allegations have, in fact, already been at least partially litigated. With respect to the Newsletter, three insurgent candidates, on September 16, 1971, brought an action in the Southern District of New York against the union and three incumbent candidates. They alleged, inter alia, that the Newsletter was campaign literature prepared and distributed at the expense of the defendant union and that their request to have the IOMM & P distribute their comparable literature prior to the balloting had been denied in violation of 29 U.S.C. § 481(c).

In a decision dated October 18, 1971, Sheldon v. O'Callaghan, 335 F.Supp. 325 (S.D.N.Y. 1971), Judge Croake stated:

> "The court finds that the 'Newsletter,' containing electioneering for the incumbent candidate, ad-hominem, attacks upon an opposition candidate, coupled with the timing of the distribution, constitute campaign literature for defendant-O'Callaghan distributed at the expense of defendant labor organization. Plaintiffs are entitled to the opportunity to have campaign literature distributed in a similar manner and with equal force as that of the defendants." 335 F.Supp. 327-28.

Judge Croake went on to deny injunctive relief restraining the mailing of ballots until after plaintiffs' campaign materials had been sent out, noting that "[t]he LMRDA provides for post-election remedies, so as to prevent blocking or delaying of Union elections while affording adequate relief through enforcement by the Secretary of Labor. . ." 335 F.Supp. 328. It is precisely such "post-election" remedies which are being sought in the present action.

This court, in examining the Newsletter itself and considering the context in which it was distributed, concurs in the opinion of Judge Croake that the Newsletter constitutes campaign literature distributed in violation of 42 U.S.C. § 481. However, it is also the conclusion of this court that such a finding by this court is not an essential element to the resolution of the present action, because the defendant union is already bound by the finding to the same effect in Judge Croake's opinion. As a party to the action before Judge Croake in which the identical issue—as to whether the Newsletter was campaign material distributed at the expense of IOMM & P—was litigated in a similar context as the one herein, the IOMM & P is collaterally estopped from asserting any findings contrary to those made by Judge Croake. *Zdanok v. Glidden Co.*, 327 F.2d 944, 954-56 (2d Cir. 1964), *cert. denied*, 377 U. S. 934 (1964). The union contends that this particular question was not "fully litigated" by Judge Croake since the decision was based on the submission of the Newsletter itself and affidavits describing its contents and the context in which it was distributed, rather than on an evidentiary hearing. However, such material was clearly all the information necessary for the disposition of such a question, and the judgment on such question was therefore "final" in the sense required by Zdanok:

> "'Finality' in the context here relevant may mean little more than that the litigation of a particular issue has reached such a stage that a court sees no really good reason for permitting it to be litigated again." 327 F.2d 955, citing Lummus Co. v. Commonwealth Oil Refining Co., 297 F.2d 80, 89 (2d Cir. 1961), cert. denied, 368 U. S. 986 (1962).

It thus being determined that the publication and distribution of the Newsletter constituted a violation of 29 U.S.C. § 481, a prima facie case has been made out for the proposition that such violation may have affected the outcome of the 1971 election, warranting the voiding of such election and the ordering of a supervised election under 29 U.S.C. § 482(c).[3/] For purposes of the Secretary's summary judgment motion, the court must next consider whether there exists a genuine issue of material fact as to the possibility of the

IOMM & P adducing sufficient evidence to meet its burden of showing by a preponderance of the evidence that such violation did not affect the election. The court finds that there can be adduced in this case no tangible evidence sufficient to meet defendant union's burden and accordingly grants plaintiff's motion for summary judgment.

The court bases this conclusion on the following uncontested facts: On August 19, 1971, the IOMM & P mailed to each of its members the Newsletter which this court finds to be violative of 29 U.S.C. § 481. On September 21, 1971, the American Arbitration Association ("AAA"), which the IOMM & P had selected as its impartial balloting agency to conduct the union's 1971 election, mailed ballots for said election to the members of the IOMM & P. In this election, International President O'Callaghan ran as part of a team, which included International Executive Vice-President Caldwell, International Secretary-Treasurer Lowen, and all incumbent port officers. He was opposed by Lloyd W. Sheldon, who was part of a team running for the International offices and associated with an organization of IOMM & P members known as Members for a Democratic Union, which also supported candidates for port offices. There was in addition a third slate of candidates running for the International offices. On September 16, 1971, Lloyd Sheldon and two other candidates associated with him brought the action before Judge Croake, described above, against the IOMM & P's incumbent International officers. On November 4, 1971, Judge Croake ordered the IOMM & P to publish and distribute campaign literature submitted by Sheldon and his co-plaintiffs "in a manner similar to the publication and distribution given the newsletter . . ." Pursuant to Judge Croake's order, Sheldon submitted literature to the AAA sometime after Judge Croake's order and shortly before November 9, 1971. The AAA mailed Sheldon's literature shortly after November 9, 1971, and by that time 3,000 to 4,000 ballots had been cast and returned. All ballots were required to be received by December 21, 1971, and when the ballots were actually counted on December 22, 1971, all those on the O'Callaghan team, with the exception of one minor candidate (J. Haring, who was running for Assistant Port Agent of Wilmington), either won outright or won a sufficient number of votes to enter a run-off.

Given this framework of facts, it would be impossible for defendant union to produce tangible evidence sufficient to overcome the prima facie case that the Newsletter may have influenced the election. Even assuming that the November 9th mailing purged all subsequent voting of the discriminative effects of the Newsletter (which is not a valid assumption at least as regards the third slate of International candidates opposing both O'Callaghan and Sheldon, which never was afforded a union-financed mailing), the voting which took place before November 9 was clearly of such magnitude that the results of the entire election could have hinged on the effect of the Newsletter on this pre-remedy balloting. This fact is dramatically demonstrated by the affidavit and accompanying chart annexed as Exhibit EE to plaintiff's 9(g) statement. In that affidavit, Brian P. O'Hanlon, Compliance Officer with the New York-Area Office, Labor Management Services Administration, states that upon examining the ballot envelopes from the election he is able to determine how many members within each Port of the Offshore Division had voted by certain specific dates. The accompanying chart shows that in every Port there had been ballots cast by November 9, 1971 potentially sufficient to have changed the result in all contests of the disputed election.[4] While defendant union, in its response to plaintiff's 9(g) statement, makes no claim that these computations are incorrect, it does deny them on the ground that it "has no knowledge of the source of such document nor does it admit to the statements therein." This allegation is clearly inadequate to raise a genuine issue of material fact regarding this matter. The affidavit in question explicitly outlines the documents from which its conclusions are derived, and furthermore notes that "[a]ll the documents mentioned herein are available to the parties and the court for inspection." Under these circumstances, the mere fact that defendant has failed to examine and analyze these sources does not suffice to raise a genuine issue of material fact.

The major argument which defendant puts forward to meet its burden of showing that the Newsletter did not influence the voting is the fact that some members of the O'Callaghan team won by greater margins than did O'Callaghan himself. The union claims that this rebuts the prima facie case that the Newsletter may have influenced the votes for his teammates. The court does not comprehend this argument. All that need be shown is that the Newsletter may have influenced the votes cast. Just because O'Callaghan barely avoided the necessity of a runoff in 1971 while others in his team had greater success in the polling does not mean that those who voted for the others were not influenced at all by the Newsletter.

In short, it is clear to this court that there exists no tangible evidence by which defendant can show that the Newsletter did not influence the 1971 election. There is no conceivable way in which defendant can confront and overcome the imponderables inherent in analyzing the decisions made by each elector in 1971 in choosing to vote or not to vote and in selecting the particular candidate for whom to vote in each of the various contests on the ballot.

Accordingly, this court sees fit to grant plaintiff's motion for summary judgment, declaring the 1971 election of officers conducted by the defendant void and ordering a new election under the supervision of the Secretary of Labor. In so doing, the court does not feel it necessary to consider the additional four violations alleged by the Secretary as the basis for his summary judgment motion, since the Newsletter violation, upon which the motion is hereby granted, comprehends all of the contests in the election which are involved in the additional alleged violations, and any decision regarding such violations would not affect the ultimate disposition of the case.

Within five days of receipt of this opinion, submit order on notice.

Dated: New York, New York

March 17, 1976

SO ORDERED

CONSTANCE BAKER MOTLEY
U. S. D. J.

FOOTNOTES

1. This 1974 election included a run-off election which actually transpired in 1975.

2. The Secretary of Labor has instituted an action before this court, 75 Civ. 2095, contesting certain aspects of the 1974 election. That action will become moot as a result of the supervised election conducted pursuant to the granting of summary judgment for plaintiff in the instant action.

It should also be noted that in the case styled Sheldon v. O'Callaghan, 497 F.2d 1276 (2d Cir. 1974), cert. denied 419 U.S. 1090 (1974), affirmed from the bench by [illegible] second appeal, February 26, 1976, it has been held that the 1970 constitution of the IOMM & P, under which the 1971 election was conducted, was adopted improperly in that dissident views on the adoption of that constitution were not properly disseminated by the union officers. An elaborate remedial procedure formulated by District Judge Knapp and affirmed by the Second Circuit does not void the 1970 constitution, but merely establishes a lengthy procedure whereby the union must take action to allow the membership to reconsider and vote upon it. Were the 1970 constitution to be discarded, which is not at all a certainty, yet another election would perhaps be mandated. Yet this possibility is far too tenuous to prevent this court from remedying the violations which it finds to have occurred in the matter duly before it.

FOOTNOTES, cont'd

3. See p. 14 supra.

4. The relevant number of ballots which potentially could change the result of an election is one-half of the margin of victory plus one.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

S.D. N.Y.

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W. J. USERY, Secretary of Labor, :
United States Department of Labor,
:
Plaintiff,
:
-against-
: 72 CIV. 5031
INTERNATIONAL ORGANIZATION OF
MASTERS, MATES AND PILOTS, :
INTERNATIONAL MARITIME DIVISION,
ILA, AFL-CIO, :

Defendants. :

-------------------------------------x

ORDER

On April 14, 1976, an order was signed by the court in the above captioned matter. Such order had been pre-dated "March 25, 1976" by the judgment clerk of the court, and such date was not changed to reflect the fact that the order was actually signed on April 14, 1976. Accordingly, it is hereby Ordered that said order be amended nunc pro tunc to reflect the fact that the date of signature by this court was April 14, 1976.

In addition, it appears that this case has been marked closed in the clerk's office. Pursuant to paragraph 3 of the April 14, 1976 order, this case shall be reinstated to the list of open cases before this court until the new election mandated in such order has been certified in accordance with Section 402(c) of the Labor Management Reporting and Disclosure Act, 29 U.S.C. § 482 (c).

Dated: New York, New York
May 4, 1976

SO ORDERED

CONSTANCE BAKER MOTLEY
U. S. D. J.

MICROFILM
MAY

United States Department of Justice

UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURTHOUSE
FOLEY SQUARE
NEW YORK, N. Y. 10007

ADDRESS REPLY TO
"UNITED STATES ATTORNEY"
AND REFER TO
INITIALS AND NUMBER

DY:ee

n-1743

April 1, 1976

Honorable Constance Baker Motley
United States District Judge
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007

Re: Usery v. International Organization of Masters Mates and Pilots
72 Civ. 5031 (CBM)

Dear Judge Motley:

This is in response to Mr. Schwartz's letter of March 30, 1976 and Mr. Cohen's letter of March 23, 1976 and both of their counterjudgments and orders.

At the outset we face the somewhat anomolous situation of replying to the defendant union's position and the amicus position of the defendant union's president* which is at some variance with the position of the defendant union itself. Notwithstanding our doubts about the propriety of the amici curiae submitting a counterjudgment in this case, we nevertheless wish to comment on the changes both counter-proposals would make in the Government's proposed judgment.

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* Mr. Cohen, as noted by his letter and counterproposal now represents only Mr. Scavo, an insurgent and victorious presidential candidate in 1974, and Mr. Brown, an insurgent and defeated Secretary Treasurer candidate in 1974. While at one time Mr. Cohen represented Gerald Johnson as well, as insurgent and victorious Executive Vice-Presidential candidate in 1974, that no longer seems to be the case.

First, the union asks the court to add to the second paragraph of the Government's proposed judgment language which would have the new election run in accordance with either the provisions of the International's Constitution and Offshore Division's Bylaws in effect in 1971 or those in effect in 1974. The union leaves it to the Court to select which provisions would be most appropriate. The amici curiae request that language be added to the second paragraph merely stating that the supervised election be conducted in accordance with the union's Constitution to the extent that Constitution is not inconsistent with the Labor Management Reporting and Disclosure Act ("Act"). We submit that the proposals of both the union and the amici are inappropriate.

Section 402(c) of the Act, 29 U.S.C. § 482(c), specifically directs that the new supervised election is to be conducted "so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization." This provision attempts to ensure that the new election will be guided by the provisions of the organization's constitution and bylaws in effect at the time the new election process begins, except for those provisions which are not lawful or practicable (i.e. do not conform to the requirements of Title IV the Act). Accordingly the provisions of the IOMM&P's Constitution and the Offshore Division's Bylaws now in effect, except for those particular provisions which the Secretary determines are not lawful or practical, will govern the new election.* The Court need not refer the election process back to provisions effective at earlier periods. Only a fair, lawful new election need be assured and this will be accomplished with minimal disruption of the union's normal processes if the provisions of the Constitution and Bylaws now in effect govern and, of course, if the election is supervised by the Secretary. Thus, if any language is to be added to the Government's second paragraph, it should track the words of the law and indicate that with the exception of unlawful or impracticable provisions, the provisions of the Constitution and Bylaws operative at the time the Judgment is signed will govern the new election.*

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* Since the new election process will begin once the Court signs a Judgment ordering the new election, the provisions of the constitution and bylaws in effect that day should guide the election.

This alternative, we believe, adds no more, however, than what Section 402(c) of the Act provides and it is for this reason we feel the language suggested by the amici, too, is, at best, unnecessary. In addition it is noted that the actual language proposed by the amici deviates from the language of the Act. If no more is intended by their language than to ensure that the new election will be conducted, so far as lawful and practicable, in conformity with the Constitution and Bylaws, then that notion is already is already accomplished by conducting the election "in accordance with Section 402(c) ..." which language is already included in paragraph 2.

Second, the union and the amici curiae propose that the supervised election be conducted at the time of the Union's next regularly scheduled election which in this case would be from the middle to the end of 1977. To allow the union or the amici to dictate when the new election is to be held would sharply curtail the supervisory authority of the Secretary, a circumstance not contemplated nor permitted by the Act. As then Circuit Judge Stevens pointed out in Brennan v. Local 551, United A., A. & A. Imp. Wkers. of A. Inc., 486 F.2d 6, 7 (7th Cir. 1973) "[T]he Secretary's power to supervise an election required by a court order clearly includes the power to set the date of that election".*

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* If the Court chooses this alternative, we recommend that the following be inserted in paragraph 2 of the Government's proposal on line 6 between the "semi-colon" and the word "and": "said new election, in compliance with Section 402(c) of the Labor Management Reporting and Disclosure Act, shall be conducted, so far as lawful and practicable, in compliance with the provisions of the defendant union's Constitution and the defendant union's Offshore Division's By-Laws operative at the time this Judgment and Order are signed;".

The Government's proposed Judgment sets a deadline of December 31, 1976 for completion of the new election... nearly nine months in the future. This allows more than ample time for the Secretary to consult with and consider the views of the union and other interested persons with respect to setting the procedure and the dates for nominations, balloting and all other aspects of the election process. But at the same time the deadline date puts the union leadership on notice that delay in conducting the new election will not be tolerated.

The union's and amici's proposal would undermine the very purpose for which supervised elections are needed, i.e. to rectify for the public interest an improperly conducted election as quickly as possible and to "guard against a multiplicity of influences which the results of a tainted election may have on subsequent union activities (Court's Opinion, p. 12)". Neither the union nor the amici should be permitted to delay a supervised election. Incumbants - whether elected during the tainted election or at a subsequent unsupervised election - should not be permitted to prolong their terms more than is absolutely necessary. The day to day decisions of the union leadership should be given, as soon as possible to those who, in the scheme of the Act, are properly elected during a supervised election. Accordingly, we strongly oppose any proposal that would keep the supervised election from being completed before the end of this year.*

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* In Point VII of the Government's reply memorandum submitted in support of our summary judgment motion we elaborate more fully on the scope of supervision.

* Assuming balloting were completed by December 31, 1976, this would merely advance by one year the regularly scheduled election timing for the union. The union thereafter could adjust its future election scheduling appropriately if it wishes to have an election every three years.

Third, the union in paragraph 2 of Mr. Schwartz's letter queries the status of that issue concerning the right of the three top International officers to automatically assume the three top positions of the fully formed divisions, including the Offshore Division, with respect to both the supervisory role of the Secretary and the Secretary's case involving the 1974 election. In paragraph 3 of its counterjudgment the union leaves it to the Court, however, to determine if that issue is moot.

We believe strongly that paragraph 3 of the union's counterjudgment should not be included in the final Judgment and Order.

Contrary to what Mr. Schwartz says in his letter, the Court has not yet declared the 1974 election case moot and we believe that that decision is entirely proper. See Court's Opinion, footnote 2. Once new officers are installed, the 1974 election itself may be moot; but only after the supervised new election has been completed and the results approved by the Court will the lawsuit arising out of the 1974 election and the issues raised therein become moot. By then the issue will have been negated, for the new election will not be permitted to go forward unless all the election procedures to be followed are "lawful". As we have explained in Point VII of our Reply Memorandum in support of our summary judgment motion, the Secretary does not consider the scheme permitting the three International officers to become the three top officers of the Divisions without a separate election therefor to be in conformity with the law. And as part of his supervisory authority he will require that the union present some other acceptable plan.* In sum, this "issue" is alive in the supervisory process and until this illegal scheme has been corrected, the 1974 election case will not be considered moot.

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* While the Secretary will consult with the union and interested persons and consider any proposals submitted, such deliberations will not be permitted to delay the election process beyond the December 31, 1976 deadline.

Fourth, the union requests the Court to order that the Secretary's supervision of the new election be considered a suitable substitute for those provisions in the IOMM&P's Constitution and Offshore Division By-Laws mandating that an outside independent agency conduct the union's election. Again, the Secretary strongly objects to this idea.

It is normal procedure to allow an independent agency, in such instance as this, to perform the mechanics of conducting an election: preparing and mailing the ballots, mailing the campaign literature, checking voting eligibility, tallying the vote, and so forth. The Secretary after determining what is to be done and how that is to be accomplished, then ensures that it is being done correctly. It is not for the Department of Labor to perform each of the chores. The Department merely supervises. The limited staff of the Department's Labor Management Services Administration - that unit handling election matters, among other things - could not possibly perform all its tasks if it were obliged to handle every aspect of a court ordered election. Indeed the staff in the New York Area Office already is supervising or preparing to supervise two other elections and has at least four new election cases in the investigative stages, not to mention the time they spend on embezzlement cases, delinquent reportings and the other normal functions of their jobs.

An independent agency is called for by the Constitution and By-Laws and the union should be compelled to abide by its own rules. That it may be expensive is no excuse. Certainly the Government should not be held for the cost of correcting a wrong committed by the union itself.

Fifth, the amici curiae propose in Mr. Cohen's letter that the judgment explicitly state that the present union officers remain in office pending certification of the results of the supervised election. In their proposed judgment, however, they suggest that the present officers stay in office "pending the completion of such [new] election" (see their paragraph 2). It is thus difficult to fathom just when the amici propose newly elected officers should be installed. After the tallying of the ballots? Once the independent agency certifies the results? Once the Secretary certifies the results? Or once the Court ratifies the results of the new election?

It is the position of the Department of Labor that the scope of the Secretary's supervisory authority normally covers all aspects of the election process, including the nominations, the elections and the installation of officers. After the election is completed, the Secretary determines when officers are to assume office, and he will set a schedule for their installation conforming as nearly as may be appropriate with the requirements of the union's constitution. After the Secretary has determined that the election process - including the installation of officers - has been conducted in accordance with the requirements of the Act, he then certifies the results to the Court, i.e. reports to the Court that all - including the installation of officers - has been completed properly. It is at that point up to the Court to enter a decree declaring the installed persons to be the officers of the union. See 29 U.S.C. §482(c). Depending on circumstances that may develop, however, it may be appropriate to delay the installation of officers. If there are charges that the new election has not been conducted lawfully, for example, the Secretary should have the flexibility to delay the installation of officers pending an investigation of those charges. On the other hand even if charges are filed, it may be that delay of installation of new officers is not warranted. This depends on the facts that arise. To dictate now what the Secretary should do would accordingly be premature.

We thus recommend that the language proposed by the amici be deleted altogether. The language now in the judgment proposed by the Government subsumes the notion that supervision includes the right to determine the appropriate date for installation of officers and that should be sufficient. It should also be noted that a determination now as to precisely when the new officers should assume office may prove unnecessary. Facts may never develop which would require the Court to rule on this issue. If they do, however, there will be time enough for any concerned person to apply to the Court for a proper determination at that time. The Court need not concern itself with this problem presently.*

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*We request an opportunity to be heard further if the Court wishes to include language in the judgment on this issue.

BEST COPY AVAILABLE

Sixth, the amici curiae propose that the enforcement of the judgment be stayed pending appeal. In view of the fact that Section 402(d) of the Act, 29 U.S.C. § 482(d), explicitly prohibits a stay of an order directing an election, this proposal must be rejected.

In conclusion, we submit that the Government's proposed judgment is both consistent with the Act and the Court's opinion. Accordingly, we respectfully request the Court to accept the form of our Judgment.

Respectfully,

ROBERT B. FISKE, JR.
United States Attorney

By: ______________________________
DENNISON YOUNG, JR.
Assistant United States Attorney
Telephone: (212) 791-1969

cc: Marvin Schwartz, Esq.
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MARVIN SCHWARTZ
BURTON M. EPSTEIN

[illegible]

March 30, 1976

Hon. Constance Baker Motley
United States District Judge
United States Courthouse
Foley Square
New York, New York 10007

Re: Hodgson v. IOMM&P
72 Civ. 5031 (CBM)

Dear Judge Motley:

I am enclosing a copy of defendant's Counter-Proposal for your Judgment and Order and I would like to take this opportunity to explain certain questions which should be resolved in the Judgment and Order and which are not resolved by the Secretary of Labor's proposal.

1. Your Opinion advises that the 1971 election should be rerun. Under the current Constitution and By-Laws which have been in effect since 1970, the By-Law provisions governing the 1971 election were different from those governing the 1974 election and all subsequent elections. In the 1971 election only (the "transitional"election), the members of former locals voted for the officials in that port. Thus, for example, Local 88 members, the New York Local, were the only members permited to be candidates for and to vote for the Port Agent and Assistant Port Agents in the Port of New York. In the 1974 election, under

the same current By-Laws, the election for all Port Agents and Assistant Port Agents was conducted on a national basis. Thus, in 1974, all of the members of the Offshore Division (subject to the minimum qualifications requirements) were eligible to run for office in any port and they also voted for the Port Agents and Assistant Port Agents in New York as well as in all other ports.

As you can see, part of the scheme of the new Constitution and By-Laws that were adopted in 1970 was to provide for a transition period with regard to the scope of the voting. It is my belief that the Order should reflect whether or not the 1971 election is going to be rerun under the 1971 rules or if it is going to be rerun under the 1974 rules.

2. In your Decision you advised that the 1974 election challenges are now moot. However, you ruled only on the issue of the "newspaper". The 1974 challenges are based solely on the right of the three International Officials to serve as fiscal and executive officers of the fully formed divisions. Your Opinion in no way addressed itself to that issue. However, in my conversation with Stuart Parker, Esq., Assistant U.S. Attorney in charge of that case, he assumes that the Department of Labor will have the right to make such a decision as part of their general authority under the Order granting them the right to supervise the 1971 election.

3. The expense to the Union to conduct the 1974 election under the auspices of the American Arbitration Association was enormous. I would hope that your Order would provide that the supervision of the rerun of the 1971 election by the Department of Labor would eliminate the necessity for any participation by the American Arbitration Association or any other independent agency. Specifically, the Union's Constitution requires supervision by an independent agency and it would seem to me that that obligation is fulfilled when the Secretary of Labor supervises a new election and if your Order could so provide, I would assume hopefully that we would have no challenge on that score from any of the members.

We will make application to the Court of Appeals for an expedited Appeal and I would hope that we would obtain the cooperation of the Department of Labor in this matter so that the application can be made within 10 days or so of the signing of the Order. Also under those circumstances, I hope that the Order would be as specific as possible so that the case can be presented in reasonably clear focus to the Court of Appeals.

Respectfully yours,

Marvin Schwartz

MARVIN SCHWARTZ

MS:eml
CC: Dennison Young, Jr., Esq.
Ernest Allen Cohen, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

33362

---x

W.J. USERY, Secretary of Labor,
United States Department of Labor,

Plaintiff,

-v-

INTERNATIONAL ORGANIZATION OF MASTERS,
MATES AND PILOTS, INTERNATIONAL MARITIME DIVISION, ILA, AFL-CIO,

Defendants.

---x

JUDGMENT AND ORDER

72 Civ. 5031 (CBM)

The above action having been brought by the Secretary of Labor of the United States Department of Labor, (the "Secretary") pursuant to Section 402 of the Labor Management Reporting and Disclosure Act, 29 U.S.C. §482, seeking to void the 1971 election of all International officers of the defendant union, International Organization of Masters, Mates and Pilots, and all the officers of the defendant union's Offshore Division and to have a new election for those positions ordered conducted under the supervision of the Secretary and

The Secretary having moved for summary judgment on the issues involved herein, and

The Court on March 17, 1976 having handed down a Memorandum Opinion granting summary judgment to the plaintiff, Secretary of Labor,

NOW, on motion of Robert B. Fiske, Jr., United States Attorney for the Southern District of New York, attorney for plaintiff herein, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The 1971 election of all International officers of the defendant Union, International Organization of Masters, Mates and Pilots, and all the officers of the defendant Union's Offshore Division is hereby declared void; and

2. A new election under the supervision of the Secretary of Labor shall be conducted for all International Officers of the defendant union and all officers of the defendant Union's Offshore Division in accordance with the International Constitution and the Offshore Division By-Laws as they existed in ______________ (the date 1971 or 1974 should be inserted as clarification of the Court's decision and as is amplified in the attached letter); and in accordance with Section 402(c) of the Labor Management Reporting and Disclosure Act, 29 U.S.C. §482(c); and

3. This Order for a new election (does) (does not) moot the issue with regard to the International officers' status as International executive and fiscal officers of the fully formed Offshore Division; and

4. The said new election under the supervision of the Secretary of Labor shall be conducted in accordance with the time schedule for the next regularly scheduled election in 1977 as is provided in the International Constitution and Offshore Division By-Laws.

5. The supervision of the new election by the Secretary of Labor shall fulfill the requirement set forth in the International Constitution and Offshore Division By-Laws which require supervision of the election of officers by an impartial balloting agency; and

6. The Court shall retain jurisdiction over this matter until said new election has been certified in accordance with Section 402(c) of the Labor Management Reporting and Disclosure Act, 29 U.S.C. §482(c).

CONSTANCE BAKER MOTELY
United States District Judge

Dated; New York, New York
April , 1976

Judgment entered this

day of , 1976.

Clerk

United States Department of Justice

UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURTHOUSE
FOLEY SQUARE
NEW YORK, N. Y. 10007

ADDRESS REPLY TO
"UNITED STATES ATTORNEY"
AND REFER TO
INITIALS AND NUMBER
DY:lg

February 26, 1976

Honorable Constance Baker Motley
United States District Judge
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007

RE: Hodgson v. International Organization of Masters, Mates and Pilots
72 Civ. 5031 (CBM)

Dear Judge Motley:

Yesterday afternoon we received a copy of Mr. Marvin Schwartz's letter dated February 26, 1976 addressed to Your Honor, together with the enclosed "spreadsheet" and explanatory letter and the brief related to another matter before the Court of Appeals.

In his material Mr. Schwartz raises a number of issues that deserve comment.

First. Mr. Schwartz suggests that the second appeal in the case styled Sheldon v. O'Callaghan, 497 F.2d 1276 (2d Cir. 1974), cert. denied, 419 U.S. 1090*, which was argued before the Second Circuit today, has some bearing on the instant matter. His assertion is erroneous. The matter before the Second Circuit concerned the propriety by which the 1970 constitution of the International Organization of Masters, Mates and Pilots (IOMM&P) was approved by the union's membership. Certain members of the union claimed that the 1970 constitution was adopted improperly in that dissident views on the adoption of that constitution were not properly disseminated by the union officers. The Second Circuit, on May 28, 1974 reversed the initial decision of Judge Knapp (which had dismissed plaintiff's complaint) and held that the 1970 constitution was improperly adopted; and the Court of Appeals remanded the matter to Judge Knapp merely to fashion relief. At that point, assuming the 1970 constitution was void, a scheduled trial date of June 17, 1974 for the case before Your Honor was adjourned. If the 1970 constitution was void, then the 1971 election held pursuant to that constitution likewise would be void. Accordingly, it was felt advisable to await the relief to be fashioned by Judge Knapp.

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* This case is not to be confused with the case styled Sheldon v. O'Callaghan heard before Judge Croake in 1971 wherein Judge Croake found the IOMM&P's Newsletter was campaign material distributed in favor of O'Callaghan and his slate and that the IOMM&P did not make mailing lists available to candidates in former Local 88 (Port of New York) in further violation of the Labor Management Reporting and Disclosure Act. See Sheldon v. O'Callaghan, 335 F.Supp. 315 (S.D.N.Y. 1971); Exhibits CC and II, Government's Rule 9(g) Statement.

On June 13, 1974, however, the Court of Appeals modified their May 28, 1974 holding. Instead of merely reversing and remanding for relief purposes, the Second Circuit revised its opinion slightly and remanded for further evidence to be taken on the defendant union's assertion that they would have presented more evidence to the Court below had it's(union's) motion to dismiss not been granted. It then became apparent that the matter before Judge Knapp would not be expeditiously considered and accordingly the Government resumed preparation of the instant case.*

On July 2, 1975 Judge Knapp heard additional evidence in this matter and on August 5, 1975 he rendered judgment for the plaintiffs, finding that the plaintiffs had not been given proper opportunity to disseminate their views. The relief provided by Judge Knapp, however, does not void the 1970 union constitution under which the 1971 election was conducted. The 1970 constitution was not discarded and, indeed, may never be. We annex a copy of Judge Knapp's Judgment of August 5, 1976, wherein he set forth a lengthy procedure whereby the union must take action to allow the membership to reconsider and vote upon the 1970 constitution. It is clear that the union membership could ratify the 1970 constitution and even if they don't, there is yet further opportunity to consider some newly devised constitution before the 1970 constitution is declared void altogether.

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* Enclosed herewith are copies of the Court of Appeals original slip opinion and its June 13, 1974 modification.

Judge Knapp himself, however, stayed his elaborate procedure "until the date of appellate determination or exhaustion of appellate procedures" . . . and now almost 7 months later the parties are still in that appellate stage.*

The case before Your Honor should now go forward; it is certainly not moot and should be delayed by the union no longer. If a new election is ordered under the Secretary's supervision, the Secretary of course would take into consideration any events that may be transpiring with respect to the union and would make every effort to coordinate the new election with the "normal" processes of the union as long as they are consistent with the orderly and expeditious rerun of the election as ordered by the Court and directed by the Secretary. In sum, the action heard by the Court of Appeals, respectfully, is irrelevant for the purposes of the present consideration of the instant case. There is no telling what ultimately will be the final result of that action or how long all of it will take. The impact of the tainted 1971 election, whatever it "may" be, should not be allowed to go unremedied any longer. A Court-ordered supervised election should now be imposed on the union, an election which the union has delayed for so very long. The action regarding the 1970 constitution, respectfully, should be disregarded.

Second, Mr. Schwartz mentions that the 1971 election of officers was only a transitional election and that all Offshore members now vote for all officers in the Offshore Division. That these facts may be so is of no consequence to the Secretary's suit contesting the 1971 election. The wrong was done at the time and a self-imposed revamping of their procedures without the Secretary's supervision does not satisfy requirements of 29 U.S.C. §482.

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* We understand that the Court of Appeals today affirmed Judge Knapp from the bench. Further appellate efforts of course could still be taken.

This matter is dealt with at length in our motion papers and the Court is respectfully referred thereto. See, Point IV, Government's Reply Memorandum, pp. 38-40.

Third, Mr. Schwartz itemizes the cost of running the 1974 election. This, too, is of no consequence to the instant action. The mere expenditure of money on a subsequent unsupervised intervening election does not wipe away the potential unknown impact that the 1971 violations "may" have had on the 1971 election and, as a result, on the future day-to-day life of the union. In sum, nothing with respect to the 1974 election should be considered ample to moot the Secretary's case regarding the 1971 election. See, Point VI, Government's Initial Memorandum and Point II, Government's Reply Memorandum.

Fourth, Mr. Schwartz suggests that "only a few" of the O'Callaghan slate members survived in the 1974 election. We have repeatedly pointed out that this fact, even if it were true, does not moot the 1971 election case. In any event, his assertion that only a few members survived is not true. In fact, approximately 50% of the O'Callaghan slate members did survive. This matter is dealt with at length in Point II of the Government's Reply Memorandum and we respectfully refer the Court thereto (see specifically, page 17 thereof and related Exhibits).

Fifth, Mr. Schwartz makes mention of the pending action brought by the Secretary seeking to overturn the 1974 election of officers (75 Civ. 2095 (CBM)) and he suggests that the issues in that case might be consolidated with the present action. In the 1971 action the Government alleged, inter alia, that it was improper for the three international officers to automatically assume the three top offices of the union's Offshore Division without their being a separate vote among the Offshore Division members for their own three top officers. In Point VI of our Reply Memorandum we have outlined this scheme more fully and have described the nature and significance of the duties and responsibilities of the three top officers of the Offshore Division. We opted not to move for summary judgment on this issue since all that had to be shown for the Secretary to be successful in the instant action was that the union committed one violation which may have affected the outcome of the 1971 election. We further explained in Point VI of our Reply Memorandum that this additional issue could be and would be appropriately dealt with during the supervision stage by the Secretary and that, accordingly, there was no need for the Court to have to consider this issue at this time.

We continue to believe that the scheme employed by the union in this matter is tantamount to allowing the Governor of the State of New York elected by all the people in the State to become the Mayor of the City of New York without a separate election for the mayorality position. The City of New York, like the Offshore Division, is a separate entity and as legally constituted the Office of the Mayor has authorities and responsibilites separate from those of the Governor. The Mayor does not act as an agent of the Governor; he has certain independent authorities [illegible] accordingly is answerable to the people of the City of New York - thus he should be and is elected directly by the people of the City. The same should be true for the Offshore Division. It is no argument that the people in the City of New York participate in the selection of the Governor and therefor should have the Governor imposed on them as their Mayor.

We do not believe this action should be further delayed by the union's suggestion that this issue be decided now. This was one of the issues on which the union cross-moved for summary judgment but the consideration of which the Court at our request deferred. See letter of March 3, 1975 from Your Honor to the Government. If it is to be decided, more elaborate briefing may be required.* It is an issue that can be resolved during supervision, assuming a new scheme for Offshore Division officers proposed by the union is acceptable to the Secretary.** However the Court wishes to treat this matter, it is clear that the present scheme for selecting the Offshore Division's top three officers is contrary to democratic principles, those principles upon which union elections are to be fashioned. In the event that the Court were to examine this scheme at this time, we believe it should be held to be unlawful.*

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* If the Court wishes to decide this issue at this time we would delightedly brief the matter more fully if it would be helpful to the Court.

** If a suitable substitute for the present illegal scheme is ultimately adopted and a new supervised election later certified by the Secretary to the Court, at that time the action with respect to the 1974 election would be discontinued.

If the Court needs further elaboration on these issues or any other, we would be delighted to offer our assistance in any way.

Respectfully yours,

THOMAS J. CAHILL
United States Attorney

By: DENNISON YOUNG JR.
Assistant United States Attorney
Telephone: (212) 791-1969

cc: Marvin Schwartz P.C.
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New York, New York 10014

Ernest Allen Cohen, Esq.
Jaffe Cohen & Crystal
275 Seventh Avenue
New York, New York 10001

---

* *See*, *Wirtz* v. *National Martime Union of America*, 284 F. Supp. 47, 66-68 (S.D.N.Y.) *affirmed* 399 F.2d 544 (2d Cir. 1968). As with certain Patrolmen in the NMU case, which was tried before Your Honor, the Offshore Division's top three officers are "constitutional" officers with important duties who were *de facto* appointed by the IOMM&P Constitution and Offshore Division By-Laws. These three positions were "officer" positions (29 U.S.C. §402(n)) which were not filled by an "election".

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MARVIN SCHWARTZ
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(212) 691-2260

July 7, 1975

Hon. Constance Baker Motley
United States District Judge
United States District Court
United States Courthouse
Foley Square
New York, New York 10007

Re: Hodgson v. IOMM&P
72 Civ. 5031 (CBM)

Dear Judge Motley:

With further reference to my letter of June 25, 1975, this is to advise you that Captain Scavo and Captain Johnson were officially installed as the International President and International Executive Vice President of the International Organization of Masters, Mates and Pilots at a meeting of the General Executive Board in San Francisco on Tuesday, July 1, 1975. Captain O'Callaghan administered the oath of office.

Very truly yours,

Marvin Schwartz
MARVIN SCHWARTZ

MS:eml

CC: Dennison Young, Jr., Esq.

RECEIVED
JUL 07 1975
JUDGE MOTLEY'S CHAMBERS

BEST COPY AVAILABLE

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(212) 691-2290

June 25, 1975

Hon. Constance Baker Motley
United States District Judge
United States District Court
United States Courthouse
Foley Square
New York, New York 10007

Re: Hodgson v. IOMM&P
72 Civ. 5031 (CBM)

Dear Judge Motley:

The run-off election for International President and the run-off election for International Executive Vice President has just been completed. The incumbent International President, Captain O'Callaghan and the incumbent International Executive Vice President, Captain Caldwell were both defeated.

I am submitting this letter and the information contained therein in further support of the position set forth in our Cross-Motion for Summary Judgment to Dismiss the Complaint and in further support of our papers submitted in opposition to the Government's Motion for Summary Judgment.

Under the circumstances, I think a conference with Your Honor would be particularly useful in moving forward toward a final resolution of this matter.

Respectfully yours,

MARVIN SCHWARTZ

RECEIVED
JUN 26 1975
JUDGE MOTLEY'S CHAMBERS

MS:eml

CC: Dennison Young, Esq.

3152a

UNITED STATES DISTRICT COURT
UNITED STATES COURTHOUSE
NEW YORK, N. Y. 10007

CHAMBERS OF
CONSTANCE BAKER MOTLEY

U. S. ATTORNEY
1975 MAR -7 AM 9:42
S. D. N. Y.

March 3, 1975

Dennison Young, Jr.
Assistant United States Attorney
United States Courthouse
Foley Square
New York, New York 10007

Re: Hodgson v. IOMMP
72 Civ. 5031

Dear Mr. Young:

After briefly reviewing the papers submitted with respect to the pending motions for summary judgment, I agree with your suggestions as outlined in your letter of February 5, 1975.

Accordingly, with respect to the Government's motion the Government may reply to defendant's responding papers, and with respect to the defendant's motion the Government need not respond until the Government's motion is decided.

Sincerely yours,

Constance Baker Motley

CBM:rt

Constance Baker Motley

cc: Marvin Schwartz, 243 Waverly Pl., NYC
Ernest Allen Cohen, Jaffe Cohen Berman & Crystal,
275 Seventh Avenue, NYC

[illegible]

72-[illegible]

February 5, 1975

[illegible]

Honorable Constance Baker Motley
United States District Judge
Southern District of New York
United States Courthouse - Room 2001
Foley Square
New York, New York 10007

Re: Hodgson v. International Organization
of Masters, Mates and Pilots
72 Civ. 5051 (CBM)

Dear Judge Motley:

On December 16, 1974 we moved for summary judgment in the above matter. As you know, our motion focused on just a few of the violations the Secretary of Labor alleges the IOMM&P committed during the course of the 1971 election of union officers, inasmuch as all violations committed need not be proved for the Court to order a new election subject to the supervision of the Secretary of Labor. It is sufficient to show that only one violation occurred which may have affected the outcome of the election.

On January 23, 1975 the IOMM&P responded to the Government's motion, and simultaneously cross-moved for summary judgment, returnable February 6, 1975. The five points on which the union now moves for summary judgment are in fact certain of the additional violations the Government alleges were committed but upon which the Government found no need to seek summary judgment.

In the interest of judicial economy and in an effort to conclude this case and perhaps set the union on a more normal course (in terms of the election of its officers)

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BY HAND
Honorable Constance Baker Motley
United States District Judge

February 5, 1975
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as expeditiously as possible, the Government proposes to reply to the [illegible]'s response to our motion but defer consideration of the union's cross-motion until the disposition of the Government's motion. If the Government's motion is granted, it will become unnecessary to respond to the union's motion.

Such course of action, we submit, is prudent. Should the Court find one (or more) of the violations set forth in the Government's motion were committed, and may have affected the outcome of the election, there would be no need to consider the cross-motion at all; for as demonstrated in Hodgson v. Liquor Salesmen's Union, Local No. 2, 334 F.Supp. 1369 (S.D.N.Y.), aff'd 444 F.2d 1344 (2d Cir. 1971) and Wirtz v. American Guild of Variety Artists, 267 F.Supp. 527 (S.D.N.Y., 1967), for example, all that is necessary for the Government to be successful is for there to have been one violation proven which may have affected the outcome of the election in question. If, by chance, the Government's motion were denied, we could then respond to the cross-motion which would not have been prejudiced by its deferral.

Furthermore, the union has recently conducted a new election of officers. A number of the offices require a run-off election.

With respect to the conduct of the 1974 election, we are also informed that a number of complaints have been or will be presented to the union for consideration by defeated candidates or their representatives, or others. The union's General Executive Board will be meeting shortly to consider these complaints. Should the determination be unfavorable to the complainants, it is not unlikely that complaints will be submitted to the Department of Labor for possible investigation. There thus exists the possibility of another action being brought by the Secretary of Labor in connection with the 1974 election, which would be mooted, however, if the Court were to find for the Government on the instance summary judgment motion. This, of course, would be true also for any subsequent action brought by the Secretary regarding the run-off election.

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[illegible]

Honorable Constance Baker Motley
United States District Judge

February 5, 1973
Page 3.

Had we not been forced to seek four orders from this Court to compel various aspects of discovery (three by Order To Show Cause) it is conceivable we would have been able to move for summary judgment and had a determination earlier, thereby avoiding these additional complications. As it now stands, it will take a relatively short period of time for us to reply to the union's opposition papers but considerably longer, and we believe without there being a necessity for it, to respond to the cross-motion.

The Court, we believe, will have little difficulty in deciding the Government's motion; all that remains, are questions of law which we respectfully suggest will result in a finding for the Government. There is no longer any reason to consider at this time additional issues which may never have to be considered.

Accordingly, we propose to reply to the union's responsive papers and, unless the Court has objection, defer responding to the cross-motion until after the Government's motion is decided.

Respectfully,

PAUL J. CURRAN
United States Attorney

By:

DENNISON YOUNG, JR.
Assistant United States Attorney
Telephone No.: (212) 791-1977

cc: Marvin Schwartz, Esq.
243 Waverly Place
New York, New York

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United States Department of Justice

UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF NEW YORK
ONE ST. ANDREW'S PLAZA
NEW YORK, NEW YORK 10007

ADDRESS REPLY TO
"UNITED STATES ATTORNEY"
AND REFER TO
INITIALS AND NUMBER
DY:ow

n-2291

July 8, 1976

Honorable Murray I. Gurfein
United States Circuit Judge
United States Court of Appeals
for the Second Circuit
United States Courthouse
Foley Square
New York, New York 10007

Re: W. J. Usery... v. International Organization of Masters Mates and Pilots...
CA:76-6076

Dear Judge Gurfein:

On June 18, 1976, the Court of Appeals for the Second Circuit heard argument in the above referenced matter, which involved an appeal from the District Court's order compelling the defendant union to conduct a new election for certain officers by December 31, 1976 under the supervision of the Secretary of Labor. That order, you may recall, cannot be stayed pending appeal (29 U.S.C. §482(d)) and, accordingly, plans for the new election have been going forward.

As part of his supervisory responsibilities (see Point III of the Secretary's appellate brief), the Secretary recently issued various instructions concerning the forthcoming court-ordered election which the union insisted it could not obey. As a result, the Secretary last week moved in the District Court by order to show cause, inter alia, to compel the union to comply with the Secretary's directives.

On Thursday, July 1, 1976, Judge Motley heard argument on the Secretary's motion and, to ensure the effectiveness of the Court's order mandating that the new election be held, ordered the union to comply with the various instructions of the Secretary.

We wish to advise the Court that in the course of the proceedings before her, Judge Motley made one ruling which may have a direct bearing on a portion of the appeal now pending before you. As outlined on pages 36-43 of the Secretary's appellate brief, the Secretary contended that those provisions in the union's International Constitution and Offshore Division By-Laws which permit the International officers to become, by virtue of their election to International office, the three principal officers of the Offshore Division without there being a separate election among the members of the Offshore Division alone for their own three principal officers were illegal. Judge Motley had not ruled on the legality of this scheme previously since it was not necessary for her decision (Secretary's appellate brief, pp. 42-43). But after lengthy argument and after considering the parties' briefs submitted to the Court of Appeals (see transcript of proceeding before Judge Motley, p. 50), she has now done so during this supervisory stage of this action and has declared this scheme to be in violation of the Labor Management Reporting and Disclosure Act, comparing it in principle to the arrangement held to be illegal in *Wirtz v. National Maritime Union of America*, 399 F. 2d 544 (2d Cir. 1968) *aff'g Wirtz v. National Maritime Union of America*, F. Supp 47 (S.D.N.Y. 1968).*

With respect to this matter as it is now before the Court of Appeals, the union had suggested that Judge Motley should have decided this matter as part of her initial decision. The Secretary responded by explaining that it was not necessary for her to decide that issue at that time but that in any event the matter was one of law which could be decided by the Court of Appeals, and we urged the Court of Appeals to so decide it. May we respectfully suggest that a decision on this matter at this time from the Court of Appeals would still be helpful to the parties and we submit would be in the interests of judicial economy, for should this Court not decide this matter, it would be left for yet another panel to consider. (In response to the union's concern, Judge Motley has indicated that if the matter is not decided on the present appeal, she would certify the issue if for some reason her ruling and related order were considered interlocutory and not immediately appealable.)

---

* See transcript of proceeding before Judge Motley, pp. 53-54. In that case, a port agent and certain patrolmen of the defendant union were found to be "officers" for which positions an election had not been held in violation of 29 U.S.C. § 481(a).

We enclose herewith for your convenience copies of the Secretary's motion papers, the union's response, the transcript of the proceeding before Judge Motley and Judge Motley's order entered July 6, 1976. This same letter and the accompanying material are being sent also to the other Judges on the panel who heard argument on the instant matter.

Respectfully yours,

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for Appellee
W. J. Usery, Secretary of Labor

By: ________________
DENNISON YOUNG, Jr.
Assistant United States Attorney
Tel. No. (212) 791-1969

cc: Honorable Constance Baker Motley
United States District Judge
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007

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INTERNATIONAL CONSTITUTION

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PREAMBLE

We, the members of the International Organization of Masters, Mates and Pilots, for the better regulation of matters pertaining to our crafts, for the protection of the lives and property entrusted to our care, for the improvement of our economic status, and for the elevation of our standing in the community and our character as men do hereby prepare and adopt this Constitution for the International Organization of Masters, Mates and Pilots.

ARTICLE I. ORGANIZATION

Section 1. Name and Principal Office

This body shall be known by the name of International Organization of Masters, Mates and Pilots, and its headquarters and principal office shall be in the Port of New York area.

It shall hereinafter be referred to in this Constitution as the "Organization".

Section 2. Structure and Composition

The Organization shall consist of Divisions:

a) Offshore Division

b) Inland Division

c) Pilots Division

d) Government Employees' Division

e) Shoreside Division

The Offshore Division shall consist of members formerly members of offshore Locals and others who qualify under its By-Laws.

The Inland Division shall consist of all members of inland Locals existing as of the date of adoption of this Constitution plus additional Locals for which charters are issued by the International President after such date.

The Pilots Division shall consist of all members formerly members of Pilot Locals and others who qualify under its By-Laws.

The Government Employees' Division shall include all members of the Organization employed by Federal, State, Municipal, or other Government units or authorities, who are not represented in collective bargaining through another Division or Local of the Organization.

The Shoreside Division shall consist of persons employed ashore who are declared eligible for membership by the General Executive Board or Convention action.

Additional Divisions may be established by General Executive Board or Convention action.

Section 3. Objectives and Purpose

It shall be the object of the Organization to protect, maintain and advance the interests of the professional maritime workers and such other persons within its jurisdiction and to unite all such persons in the Organization without regard to age, sex, race, nationality and creed. It shall also be the purpose of the Organization to improve the wages, hours and conditions of employment of its members and to engage in legislative, political,

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educational and other activities which will further the interests of the members of the Organization and of professional seafarers elsewhere in the world with similar duties and responsibilities.

ARTICLE II. JURISDICTION

Section 1. General

The Organization shall exercise and maintain jurisdiction over all persons engaged in the navigation, pilotage, and movement of merchant and other vessels and the handling of waterborne cargo. Such persons include individuals utilizing or supervising the use of all vessel equipment; and other persons declared eligible for membership by General Executive Board or Convention action who are represented by the Organization for collective bargaining purposes.

Jurisdiction of the Organization shall include positions created or established as replacements for traditional positions, as a result of technological change and scientific advancement.

This technological advancement may include changes in the method of vessel operations as well as changes in equipment.

Section 2. Jurisdiction Hereinafter Granted

If the national or international labor organization(s) with which this Organization is affiliated grants additional responsibility or jurisdiction to the Organization then such additional areas shall be incorporated into this Constitution upon approval of the General Executive Board or by Convention action.

ARTICLE III. MEMBERSHIP

Section 1. Eligibility and Application Procedure

a) All persons, as described in Article I, Section 2, shall be eligible for membership in this Organization.

b) Subordinate bodies of the Organization may limit the membership thereof to specific operations or a geographic area.

c) (1) No person otherwise eligible shall be denied application because of age, sex, nationality, color or religious beliefs. However, no applicants shall be admitted to membership, nor shall any member retain membership, who is affiliated directly or indirectly with any subversive group or association which advocates the violent overthrow of the legally constituted government of the countries in which the Organization has offices, and further

(2) No applicant shall be admitted to membership except in accordance with the quota established by any subordinate body. Initially, the job ratio for the Offshore Division shall be 1.5 members to each contract job. This ratio shall be reviewed annually by the General Executive Board which shall be authorized to adjust such ratio to meet changing employment opportunities.

The quota shall not be applied to any member in good standing of the Panama Canal Pilots Association who terminates his employment as a Panama Canal Pilot and applies for transfer into the Offshore Division, provided that the member formerly had been a member in good standing of the Offshore Division or Local at the time of his obtaining employment as a Pilot at the Panama Canal.

d) A person desiring membership in the Organization shall make application on the form supplied by the Organization. The application form shall be submitted to a Membership Committee of a subordinate body. After the applicant has made such payments as may be required by this Constitution and the By-Laws of any subordinate body, the Membership Committee shall present such documents and information at a regularly called membership meeting of the subordinate body for action on the Committee's recommendation.

Section 2. Duties of Members

a) It shall be the duty of each member to be true and loyal to the Organization, treat other members with due respect and consideration and yield strict obedience to the International Constitution, By-Laws and Rules and Regulations as the Organization or subordinate body may adopt.

b) It shall be the obligation of each member to uphold and advocate the objectives of bona fide labor organizations and to patronize union-made goods. He shall keep himself in good standing and attend all meetings of the Organization whenever possible.

Section 3. Refusal to Stand Picket Duty

All members shall be required to do picket duty, subject to reasonable rules uniformly enforced.

A member who fails to perform such picket duty shall be subject to a fine/or removal from any or all employment lists and/or removal from membership.

The amount of such fine or the period of such removals shall be determined by the Trial Committee.

Pending trial, the Port Strike Committee shall have the authority to remove such a member from the various Shipping Lists and/or to levy a fine not to exceed five hundred ($500.00) dollars.

Section 4 Rights of Members

a) In all Organization and subordinate body referenda the ballot of any member shall be counted if the member is not suspended for non-payment of dues when the ballots are mailed.

b) Every member of the Organization shall have the right to meet and assemble freely with other members; to express any view, arguments or opinions. He shall have the right to express at meetings his views upon candidates in any election or upon any business properly before the meeting, subject to reasonable rules established by the Organization or the subordinate body pertaining to the conduct of the meeting.

c) Nothing in this Section shall be construed to impair the right of the Organization or a subordinate body to adopt and enforce reasonable rules as to the responsibility of every member toward the Organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

d) Every member shall have the right to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the Organization or its officers are named as defendants or respondents in such action or proceeding.

Further, every member shall have the unlimited right to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator.

However, every member shall be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within the Organization, before instituting legal or administrative proceedings against the Organization or any officer thereof.

A member is prohibited from permitting an employer or employer association to directly or indirectly finance, encourage, or participate in, except as a party, any action, proceeding, appearance or petition referred to above.

e) No member of the Organization may be fined, suspended, expelled, or otherwise disciplined, except for non-payment of dues by the Organization, or by any Officer thereof, unless such member has been (i) served with written specific charges; (ii) given a reasonable time to prepare his defense; (iii) afforded a full and fair hearing.

f) Every member of the Organization shall have the right to a copy of the collective bargaining agreement under which he is employed.

g) Every subordinate body of the Organization shall inform its members of the provisions of the Labor-Management Reporting and Disclosure Act of 1959.

h) Every member shall have the right to:

1) Circulate petitions on union policy.

2) Publish and distribute leaflets, newspapers and all other written material or present his opinions through other media.

3) Be nominated for and hold any office unless prohibited by the Labor-Management Reporting and Disclosure Act of 1959 or by reasonable qualifications uniformly imposed by the International Constitution. No elected officer shall be removed from office except after reasonable notice and a fair hearing on charges.

4) Vote on the ratification of any collective bargaining agreements under which he works, subject to reasonable rules of his subordinate body.

5) Initiate a petition, in his subordinate body, for a referendum on any matter subject to reasonable rules in the By-Laws of his subordinate body.

6) (i) The same fair and reasonable access to the official publication of his subordinate body for presentation of a point of view that such member has at the date this Constitution is adopted subject to reasonable rules governing such publication so long as it continues; and
(ii) the same right as outlined above in any publication established by his subordinate body after the date this Constitution is adopted.

Section 5. Membership Standing

a) To be in good standing, a member must have paid

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dues for the current quarter and assessments and other indebtedness due to the Organization or the subordinate body through which he is affiliated with the Organization. A member must within 72 hours after returning to a United States port, Saturday, Sundays and holidays excepted, pay all indebtedness to the Organization or subordinate body incurred during the time he was on the voyage when he was unable to put himself in good standing.

b) A member who is not paid up in assessments, dues and other indebtedness for the current quarter is no longer entitled to any of the benefits of the Organization or subordinate body.

c) A member in arrears in dues and assessments or other indebtedness for six (6) months shall stand suspended.

d) Whenever a member of a subordinate body is in distress because of a lengthy illness, he may apply in writing to his subordinate body for a waiver of dues. If the subordinate body approves the member's application for such waiver of dues, his obligation shall be reviewed when the subordinate body deems necessary, but not less than once each year, in order to determine if the member is still in distress.

e) Members w[illegible]o are inducted involuntarily into the Armed For[illegible] have their dues waived for the period of t[illegible]oluntary service only. Within 120 days of his [illegible]arge, such member shall satisfy his obligation to the Organization and be available for employment.

f) No member of the Organization may be a member of another maritime trade union or work under a collective bargaining agreement of another maritime trade union without the express written permission of the International President or International Subcommittee. If written permission is granted under this subsection it shall only be valid for a period of six months at which time the member must reapply. If a member violates this provision, he shall be immediately suspended and shall not be entitled to any of the benefits and privileges of the Organization or its collective bargaining agreements.

Section 6. Termination of Membership

a) A member wishing to terminate his membership from the Organization must make application on a form prescribed by the Organization. Such member shall be in good standing at time of application. When such application is accepted by the International Secretary-Treasurer, such member shall have completely severed his relationship with the Organization and may apply for admittance thereafter only as a new applicant and in accordance with this Constitution.

b) A member who is suspended must, to regain admittance to the Organization, apply as a new applicant in accordance with this Constitution.

Section 7. Honorary Members

The Organization or subordinate body may grant honorary membership subject to regulations and privileges to be established by the General Executive Board. In no event, however, shall an honorary member be eligible to vote, hold office or formally represent the Organization or any of its subordinate bodies.

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Section 8. Applicants for Membership

a) Before an application may be accepted, a subordinate body must advise the International Secretary-Treasurer who shall consult the list of suspended members which shall be submitted to him periodically by the subordinate bodies.

b) Prior to his acceptance as a member by the membership of the Organization an applicant shall have no rights within the Organization except the following:

1. Employment in acordance with the National Shipping Rules and the By-Laws of his subordinate body.
2. To attend membership meetings of his subordinate body where he shall have no voice or vote.

c) If the applicant becomes delinquent in any monies payable to the Organization prior to his acceptance into membership, his application shall be denied forthwith and no monies paid shall be returned.

d) At any time prior to his acceptance into membership, the Organization or his subordinate body shall have the right to deny his application.

e) Before being admitted into membership, the applicant must tender his full initiation fee and required dues and assessments, and have his record examined by a Membership Committee which shall recommend acceptance, rejection, or postponement of the application as the findings indicate. If rejected, the initiaiton fee, but not the dues or assessments, shall be refunded.

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ARTICLE IV. CONVENTIONS

Section 1. Authority and Power of Conventions

The authority and power of this Organization is vested in the members thereof acting by and through their duly elected delegates meeting in Convention assembled.

Such Convention is the source of all true and legitimate authority over the Organization and possesses as such supreme and absolute power over same and all channels leading thereto. It shall, while in session, have the sole and exclusive power to grant charters to subordinate bodies; to suspend or revoke for cause any charter so granted; to hear and determine all appeals and to enact laws and establish regulations to settle grievances from the subordinate bodies or members thereof in order to carry out in the most effective manner the objectives and purposes of this Organization. The Convention does not have the power to alter or amend the Constitution except as provided in Article X hereof.

Section 2. Place, Date and Notice

The Convention is to be held at a place and date to be decided upon by the Convention in session. Two-thirds of the registered delegates, including the elected officers of the Organization shall constitute a quorum. The International Secretary-Treasurer shall, not less than four (4) months prior to the date of the Convention, send out to all subordinate bodies the convention call notifying them of time and place of Convention. However, in case of emergency those members of the General Executive Board representing a majority of the membership may cause a poll to be taken of all subordinate bodies, and if those Board members representing a majority of the membership vote in favor, the site and/or date of the Convention may be changed to a place and time more appropriate for all concerned.

Section 3. Representation

a) All subordinate bodies that have been regularly chartered by the Organization shall be eligible to have representation in the Convention.

b) No subordinate body shall be entitled to representation at any Convention unless such subordinate body has been chartered at least three (3) months prior to the Convention date and has paid all International Dues and all other debts to the Organization unless a special dispensation has been granted by the majority pro rata vote of the General Executive Board, or by the majority pro rata vote of the Convention.

c) Each regularly affiliated subordinate body shall be entitled to membership representation based on the average International Dues paid into the Organization for the four (4) quarters immediately preceding the Convention, but in no event shall this membership representation exceed the true mean membership of the subordinate body for the immediate preceding four (4) quarters.

d) A subordinate body shall be entitled to a maximum number of delegates in accordance with the following table:

Members	*Delegates*
up to 100	1
101 to 300	2
301 to 500	3
501 to 1000	5
1001 to 3000	7
3001 and over	25

e) Each delegate shall vote an equal percentage of membership of the subordinate body he represents provided that all fractional vote be eliminated.

f) If subordinate bodies are unable to send a delegate to the Convention, they are privileged to elect as their delegate any member in good standing from any other subordinate body of the Organization but such delegates shall be limited to vote only on matters introduced by such unit.

Section 4. Election and Credentials of Delegates

a) The delegates to all Conventions shall be the most recently elected Convention delegates from each subordinate body unless otherwise provided by a subordinate body's By-Laws and the International President, the International Executive Vice President and the International Secretary-Treasurer.

No persons shall be recognized as a delegate or alternate delegate, who is not a member in good standing within the subordinate body issuing credentials. Further, each delegate and alternate delegate must be chosen by

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a secret postal referendum ballot in an election in which all members in good standing of the subordinate body were eligible to participate unless that person is a delegate as provided for by the Constitution or the By-Laws of his subordinate body. This subsection shall also apply to a subordinate body under Trusteeship.

b) The International Secretary-Treasurer shall issue the authorized number of credentials for the delegates of each subordinate body which shall be properly attested to by the appropriate officer from the subordinate body he represents. A duplicate of said credential shall be returned to the Organization by said officer at least two (2) weeks prior to the Convention.

If an alternate presents credentials and is seated in place of the delegate-elect, he shall be the recognized representative through the remaining sessions of the Convention.

If any member of the Organization has reason to challenge the credentials of any delegate on the grounds that the delegate has not been elected in accordance with this Constitution and his subordinate body's By-Laws or any other grounds, the complaint is to be made to the Credentials Committee which shall investigate and report to the Convention. The Convention shall determine whether or not to seat the delegate. Failure to challenge the delegate in this manner constitutes a waiver of all objections.

c) The International Secretary-Treasurer shall pay reasonable expenses incident to the meetings of any Convention and the expenses of the International Officers and staff members. The subordinate bodies of the Organization shall pay the expenses of their respective delegates.

Section 5 Committees

a) The International President shall at least five (5) days prior to each Convention appoint from the delegates-elect a committee of not less than three delegates to act as a Committee on Credentials. This Committee shall have its report in writing ready for the Convention when it opens.

b) The International President shall at least five (5) days prior to the Convention, appoint the following committees, to serve for that session only, to wit:

1) Rules
2) Constitution
3) Resolutions and Petitions
4) Laws and Legislation
5) Grievances and Appeals
6) Finance
7) General Executive Board Actions

It shall be the duty of the Committee on Finance to report to the Convention on the International Secretary-Treasurer's report, making recommendation should they deem it necessary.

Section 6 General Conduct of Convention

a) The order of business at a Convention shall be as follows:

1) Call to Order
*2) Report on Credentials

---

* The Chairman of the Credentials Committee shall consult with the Chairman of the Finance Committee before making his report.

3) Report on Rules

4) Reports of International Officers

5) Report on General Executive Board action

6) Report of Committees

7) Unfinished Business

8) New Business

9) Nomination of Officers

10) Adjournment

Except as otherwise provided by this Constitution or rules adopted by the Convention, all meetings shall be governed by Roberts' Rules of Order.

b) All proposed resolutions shall be forwarded to the International Secretary-Treasurer at least thirty (30) days prior to the opening day of the Convention.

c) The order of business may be changed or suspended and new resolutions may be considered by a Convention only by a two-thirds' majority pro rata vote.

d) Members in good standing, or other individuals specifically invited by the International President and/or by the majority pro rata vote of the Convention, shall be authorized observers at any plenary session of a Convention. Such persons may attend Committee meetings only with the approval of the Committee by majority vote.

Observers who interfere with the business of the Convention or who violate rules established by the Rules Committee, shall be denied further attendance.

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Section 7. Special Conventions

A Special Convention may be called by a two-thirds' majority pro rata vote of the General Executive Board. Special Conventions may also be called for by a petition to the International President, signed by those Board members representing a majority of the dues-paying members. The time and place is to be set by the party or parties calling such Special Convention. At least thirty (30) days' written notice shall be given to the subordinate bodies prior to the date of convening a Special Convention.

Section 8. Constitutional Conventions

a) A Constitutional Convention may be called by a two-thirds' majority pro rata vote of the General Executive Board or by a two-thirds' majority pro rata vote of a Regular Convention.

b) The time, place and written notice shall be designated by the persons calling the Constitutional Convention.

c) Such Convention shall be limited to Constitutional matters.

Section 9. Records and Publication of Actions

The credentials of delegates, resolutions introduced and other records of each Convention shall be preserved until the next Regular Convention. Minutes of each Convention, and other documents or records required by law, shall be permanently maintained by the International Secretary-Treasurer.

Within ninety (90) days of the conclusion of a Convention, the affirmative actions shall be prepared and distributed to all members noting the action taken by the Convention.

Section 10. Verbatim Records

A verbatim record shall be kept at all Conventions and copies shall be forwarded to all delegates and all ports in which the organization maintains an office, as soon as possible after the close of a Convention.

Section 11. Proxy Votes

There shall be no proxy votes at any Convention except as provided in Article IV, Section 3 (f).

ARTICLE V. INTERNATIONAL OFFICERS AND GENERAL EXECUTIVE BOARD — ELECTION PROCEDURES

Section 1. Notice of Elections

Not less than fifteen (15) days prior to any election, the International Secretary-Treasurer shall give appropriate notice to the membership of the forthcoming election.

Section 2. International Officers

The officers of the Organization shall consist of an International President, International Executive Vice President, International Secretary-Treasurer, who may be referred to collectively as the International Subcommittee. These three officers, together with the three Vice Presidents of the Offshore Division and the Vice President of any fully-formed Division, shall constitute the General Executive Board. Prior to the formation of such other Divisions, the Executive Officer of each of the remaining subordinate bodies shall be members of the General Executive Board. If the Executive Officer of a non-fully formed Division is unable to attend a General Executive Board meeting, such officer of the subordinate body who shall be elected by a majority vote of the Executive Board or Committee of the subordinate body shall act in the Executive Officer's place.

Section 3. Election of Officers and Terms of Office

The International President, the International Executive Vice President, and the International Secretary-Treasurer shall be elected by a plurality vote of the general membership in each election, provided the winning candidate receives at least forty (40%) percent of the valid ballots counted. Voting shall be by secret ballot and conducted by an impartial balloting agency selected by a majority pro rata vote of the International Convention.

If a run-off election is necessary it shall be between the two candidates receiving the highest vote. If one of the two candidates in a run-off election declines to run, the other candidate shall be deemed elected for said International office. The International Ballot Committee, the Impartial Balloting Agency, and the balloting procedures shall be the same as in the original election. The original list of eligible voters, with deletion of members who are no longer in good standing shall be used for the mailing of ballots. No other proposition may be placed on the ballot and the balloting shall commence forthwith but in no event later than thirty (30) days following the certification of the results of the election.

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Unless legally removed, all elective International Officers shall hold their respective offices for a term of three (3) years, or until their successors are duly elected and installed.

Section 4. Eligibility for International Office

Any member shall be eligible for nomination to an election as International President, International Executive Vice President, or International Secretary-Treasurer provided that at the time of nomination he has been a member of the Organization for a period of four (4) years, two of which shall be immediately prior thereto, and is in good standing, as provided in Article III, Section of 5 of this Constitution.

No member can accept nomination to, or be candidate for more than one office in an International election.

Section 5. Nominations

Nominations for the offices of International President, International Executive Vice President and International Secretary-Treasurer shall be made at the Regular Convention preceding the election.

When a nomination is made in Convention for these offices, the mover of the nomination must at such time present a statement setting forth the nominee's name, last known address, qualifications, background and general experience. The same information required of a member nominated in Convention shall be furnished along with any nomination by petition.

Nominations may also be made by petition signed by not less than fifty (50) members of the Organization. Verification of the good standing of the petitioners shall be made by the appropriate officer of the subordinate body of which the signators are members. All such nominations by petition must be received by the International Secretary-Treasurer prior to the time the Chairman declares nominations closed for International Officers.

No later than ten (10) days after the close of the nominations, each candidate shall have the right to submit a statement not to exceed two hundred (200) words which shall include such information as:

a) Date of joining Organization.
b) Subordinate bodies he has belonged to.
c) License date and issue number, if any.
d) Special reference shall be made as to whether he was suspended or dropped at any time he was in the Organization.

This statement by a candidate shall appear on the ballot. If a statement is not furnished as required in this section, no statement shall appear with the candidate's name on the ballot.

Notification to Nominees

The nominees for the office of International President, International Executive Vice President and International Secretary-Treasurer shall be notified by telegram or cable of their nomination. Such telegram or cable shall advise the candidates of the following:

a) the ten-day acceptance rule.
b) that his written acceptance must state that he is not disqualified as a candidate by the Labor-Management Reporting and Disclosure Act of 1959.

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c) of his right to submit a statement for inclusion on the ballot, not to exceed 200 words which shall include such information as required in a), b), c) and d) of this Section 5.

(For the purposes of this Section, telegrams or cables shall be considered communications in writing.)

Acceptance of Nomination

Only those candidates who shall have notified the International Secretary-Treasurer, in writing, within ten (10) days after the close of the nominating period that they will accept the nomination shall have their names placed on the International ballot.

Every candidate for any office in the Organization shall certify in writing that he is not prevented from holding office by any provision of the Labor-Management Reporting and Disclosure Act of 1959 or by any provision of the International Constitution. Such certification shall accompany every candidate's acceptance of his nomination for office.

Section 6. Election of International Ballot Committee

An International Ballot Committee shall supervise the election and certify that the election was conducted in accordance with the International Constitution.

The Committee shall consist of five (5) members and a first, second and third Alternate, nominated and elected by the Convention who are not candidates for office in the election to be supervised.

The Committee shall elect its own Chairman.

Section 7. List of Eligible Voters

a) No later than the tenth day following the close of the nominating period, each subordinate body shall furnish a list of members, in duplicate, to the International Secretary-Treasurer, who have not been suspended for non-payment of dues, unless the International Office maintains such information. This list is to include the book number and the home address of each member as recorded on the records of the subordinate body. This list must be certified by the appropriate officer of the subordinate body. The International Secretary-Treasurer shall furnish a copy of such list to the Impartial Balloting Agency.

b) Each member whose name appears on the above list shall be mailed a ballot.

In the event a member's name appears on more than one list, he shall only receive one ballot for the election of International Officers.

c) If for any reason any member in good standing does not receive his ballot he may request, in writing, a ballot from the Impartial Balloting Agency. Such request shall include a statement that he has neither received nor voted any ballot in this election. The Impartial Balloting Agency shall issue a ballot to such member found entitled thereto. If a duplicate ballot is issued it will be clearly marked "DUPLICATE."

Section 8. Balloting Procedure

a) The Impartial Balloting Agency shall send out sufficient sample official ballots to each subordinate body of the Organization and each such ballot shall bear the names of all candidates who have been nominated and

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who shall have notified the International Secretary-Treasurer of their acceptance of such nomination. The form of the official ballot of all subordinate bodies shall be identical in nature and stamped across the body of the ballot "SAMPLE."

b) The ballot shall be enclosed in an envelope which shall have only the following printed thereon: SECRET BALLOT.

The SECRET BALLOT envelope shall be enclosed in an outer envelope which shall have the following information completed by the member in the upper left hand corner: his printed name and address, his subordinate body and book number, and his signature. This envelope shall be pre-stamped and self-addressed to the Impartial Balloting Agency, c/o Safe Deposit Vault which shall be located in the city in which the headquarters of the Organization is located, to be kept for tabulation and certification purposes.

c) The Impartial Balloting Agency shall be responsible for making all arrangements for such Safe Deposit Vault and for the placing therein of the locked and sealed ballot box of the Organization. All such arrangements shall be subject to the approval of the International Ballot Committee. The Impartial Balloting Agency shall retain in its possession the keys to the locked and sealed ballot box until the election results have been certified by the Impartial Balloting Agency.

d) Immediately following the tenth day after the close of the nominating period, the Impartial Balloting Agency under the supervision of the International Ballot Committee shall prepare the official ballot and shall mail one such ballot to each member of the Organization who has not been suspended for non-payment of dues at the time the ballots are mailed out. All ballots shall be mailed not later than the thirtieth day following the close of the nominating period at which nominations have been made.

e) In any case where a member has listed an office of the Organization or care of an official of the Organization as his last known address, the Impartial Balloting Agency shall mail a notice to such member at that address informing such member of the means by which he can obtain his ballot. The Impartial Balloting Agency shall not send any ballot to an office of the Organization nor in care of an official thereof except the official's own ballot to his own home.

f) The International Ballot shall be officially closed ninety (90) days after the date of the mailing of the ballots by the Impartial Balloting Agency. All ballots postmarked later than that date shall be declared void. In the case of those members receiving duplicate ballots, the one with the earliest postmark shall be counted.

g) The members of the official International Ballot Committee and the Impartial Balloting Agency shall be empowered with an order executed by the Organization and signed by the International President and International Secretary-Treasurer and under the seal of the Organization to proceed within seven (7) days following the close of the balloting to the safe deposit vault where the locked and sealed ballot box is kept. Upon presenting the duly executed order to the custodian of the safe deposit vault said custodian shall deliver the ballot box which shall contain all ballots which have been cast.

h) The Impartial Balloting Agency shall proceed then to counting the ballots. Candidates receiving a plurality

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vote of the general membership for each office, provided the winning candidate receive at least forty (40%) percent of the valid ballots counted, shall be declared elected and a certification of the results shall be made by the Impartial Balloting Agency. Telegrams or other communications shall be sent to all subordinate bodies containing the results of said election.

i) Challenges to the election must be made at the time of the counting of the ballot by the candidate or his representative observer who shall possess certification of same from the candidate he represents.

j) The ballots and all records pertaining to the election must be preserved for one year.

Section 9. Miscellaneous Election Matters

a) Any candidate desiring to distribute literature in connection with his candidacy, as provided under Section 401 (c) of the Labor-Management Reporting and Disclosure Act of 1959, shall be required to pay in advance for the cost of such distribution. The amount shall be certified by the independent mailing service as designated by the Impartial Balloting Agency. The Impartial Balloting Agency shall make appropriate arrangements for the security of the mailing list. The Impartial Balloting Agency shall immediately notify the candidates of the name of the mailing service and the cost of distribution of the candidate's literature.

b) Installation of officers shall take place not later than thirty (30) days after the results of the ballot are known, at the convenience of the successful candidate.

Section 10. Vacancies in office

a) In the event there is a vacancy in the office of International President, the International Executive Vice

President shall assume the office for the remainder of the term. If the International Executive Vice President declines the position, it shall be filled by the International Secretary-Treasurer. If the International Secretary-Treasurer declines the position, it shall be filled as provided in subsection (b) below.

(b) Except for the succession procedure set forth in Subsection (a) above, any vacancy in any International Office shall be filled by majority pro rata vote of the General Executive Board until the next regular election.

Section 11. General Executive Board

All members of the General Executive Board, other than the International President, International Executive Vice President and International Secretary-Treasurer, shall be elected by secret referendum ballot by the members in good standing of the subordinate body they represent, in accordance with the By-Laws of that subordinate body. They shall remain on the General Executive Board by virtue of their continuation as Vice President or Executive Officer of a subordinate body.

Section 12. Suspension and Removal of International and Subordinate Body Officers

a) *International Officers* — The General Executive Board shall have the power to suspend any International Officer from office by the two-thirds' pro rata majority vote of the entire Board. Immediately after any suspension, the General Executive Board shall submit a recall referendum ballot to the membership of the Organization which shall contain a description of the offense(s) and the approximate dates thereof.

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If the majority vote of the membership approves the suspension action the suspended International Officer shall be deemed removed from office. If the majority vote of the membership disapproves the suspended action, the suspended International Officer shall be deemed fully restored to his office.

b) *Subordinate Body Officers* — The By-Laws of each subordinate body shall provide adequate procedures for the removal of its officers.

ARTICLE VI. AUTHORITY AND DUTIES OF INTERNATIONAL OFFICERS AND INTERNATIONAL SUBCOMMITTEE

Section 1. Duties of International President

It shall be the duty of the International President and he is hereby authorized to:

a) preside at all Conventions and General Executive Board meetings and shall have the deciding vote in case of a tie on any question.

b) grant dispensation authorizing subordinate bodies to organize and authorizing groups to operate until such time as they receive their charters with the approval of the General Executive Board.

c) appoint all representatives of the Organization to serve on International, National and local labor or professional organizations with which the Organization is affiliated, or programs which require Organization representation.

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d) decide on all points of law, interpretations of the Constitution, and/or grievances submitted to him by the subordinate bodies, after consulting with International Counsel. When the International President makes a decision or interpretation and/or orders a subordinate body to observe the laws, rules and regulations and the subordinate body refuses, the subordinate body shall be subject to suspension or revocation of its charter with the approval of the General Executive Board.

e) be an ex-officio member of all committees.

f) supervise the affairs of the Organization acting to further the interests of the membership.

g) act as the Executive Officer of fully-formed Divisions and render services thereto.

h) accept a call to serve by the government of the United States if he believes it is in the best interests of the Organization to accept. In such cases his position and remuneration with respect to the Organization shall continue. If such service is for more than thirty days it shall require approval of the General Executive Board by its majority vote.

i) direct that a referendum vote or a vote by membership meeting be held by the membership of any subordinate body on any matter, issue or proposition when he believes that the welfare of the membership of the subordinate body will be protected or enhanced by such action.

j) delegate to a person or persons the execution of such of his duties as he may decide, provided, however, that the responsibility of the International President as provided in this Constitution or by statute shall not be delegated.

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k) supervise the other International Officers assigning them to such duties at such locations as in his opinion will permit the work of the Organization to be handled in the most efficient manner, provided such assignment shall not conflict with specific Constitutional duties of such other officers.

l) serve as the Editor of the official publication of the Organization, "THE MASTER, MATE AND PILOT."

m) appoint such organizers, representatives, assistants, counsel, accountants and other professional personnel as he may require to assist him in the duties of his office and to fix their compensation, with the approval of the General Executive Board.

n) appoint a Trustee to take charge and control of the affairs of a subordinate body in accordance with applicable provisions of the Constitution and the approval of the General Executive Board for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures or otherwise carrying out the legitimate objectives of this Organization.

o) sign all official documents on behalf of the Organization and its subordinate bodies, when required.

p) attend and participate at meetings of subordinate bodies and to visit any vessel or work location at which members are employed.

q) make agreements with Employers binding a subordinate body when such body requests such as-

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sistance in negotiations, subject to ratification by the membership in accordance with the subordinate body's By-Laws.

r) designate the proper bargaining agent if two or more subordinate bodies negotiate for or seek representation of the same employees of a particular employer or association of employers.

Section 2. Duties of International Executive Vice President

It shall be the duty of the International Executive Vice President and he is hereby authorized to:

a) perform such duties as may be required of him by the International President.

b) preside at a Convention, General Executive Board Meeting or any meeting normally chaired by the International President when the latter is not able to perform such functions.

c) serve as the International President in the event a vacancy in that office occurs.

d) act as the Assistant Executive Officer of all fully-formed Divisions.

Section 3. Duties of International Secretary-Treasurer

It shall be the duty of the International Secretary-Treasurer and he is hereby authorized to:

a) receive all monies paid to the Organization and give an official receipt for same.

b) keep an accurate account of all monies received and disbursed and a separate account of all monies received from the subordinate bodies of the Or-

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ganization. He shall keep an accurate list of all members of the Organization from the information which shall be furnished by the appropriate officer of each subordinate body showing the standing of each member with regard to such member's payment of dues, assessments and other monies required to be paid to the Organization.

c) render a complete report to the General Executive Board meeting and Convention giving a complete statement of membership records for the previous year, all monies received and to whom and for what paid out, the amount disbursed during the year and assets and liabilities of the Organization, together with the cash balance on hand at the close of the fiscal year.

At the end of each fiscal year, the International Secretary-Treasurer shall present a CPA's audit for posting on the bulletin board at each office of the Organization and for distribution to the membership through the official publication.

d) keep a true record of all transactions of the Organization.

e) deposit all monies received to the credit of the Organization in a bank or banks as he shall determine will offer the most advantageous yield consistent with safety and good financial management, with the consent of the General Executive Board. He shall sign all checks duly authorized for the purpose of paying current expenses.

Should the International Secretary-Treasurer be unable to perform these duties the International President, or the International Executive Vice President if so required by the International Pres-

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ident, shall have the authority to sign such checks and have access to the accounts or safety deposit box, and the bank(s) shall be so notified by the General Executive Board.

f) perform other duties not in conflict with this Section as the International President or General Executive Board may delegate to him from time to time.

g) preserve and have custody of all correspondence concerning the Organization and all its property, securities, documents, books, official seals, records, etc. wherever located.

h) hire such clerical help as is necessary to carry on the business of the Organization and to meet his official duties, and to determine the remuneration and working rules and conditions of such employees with the approval of the International Subcommittee.

i) arrange for the preparation and distribution of minutes or other records of the actions taken or business discussed at Conventions, General Executive Board Meetings and other important correspondence related to the activities of the Organization.

j) cause the payment of proper bills and expenses of the Organization when supported by satisfactory statements or vouchers.

k) maintain such records or prepare such reports as may be required by Federal, State or local law.

l) deliver to his successor all funds and property of the Organization in his possession at the expiration of his official term.

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m) act as the Financial Officer of all fully-formed Divisions

Section 4. Duties of the International Subcommittee

It shall be the duty of the International Subcommittee to conduct the affairs of the Organization between meetings of the General Executive Board. It shall have full authority to act on behalf of the Organization, subject to the action of the next meeting of the General Executive Board or Convention.

Section 5. Remuneration of International Officers

Effective on the adoption of this Constitution, existing benefits of International Officers shall continue, including a provision for sixty (60) days' annual vacation. The annual salaries of officers shall be: International President — forty thousand ($40,000) dollars; International Executive Vice President and International Secretary-Treasurer — Thirty-five thousand ($35.000) dollars.

Thereafter, the International Officers shall receive such compensation and benefits for their services as the International Convention may determine. They shall be reimbursed for all reasonable expenses incurred in the performance of the duties of their office.

ARTICLE VII. GENERAL EXECUTIVE BOARD

Section 1. Voting Procedure

"(a) Each member of the General Executive Board shall have one vote and a majority of the votes cast at any meeting of the General Executive Board shall be necessary to adopt any resolution."

"(b) A majority of the General Executive Board members shall constitute a quorum."

Section 2. Meetings.

a) Meetings of the General Executive Board shall be held at least twice each year. They shall be held at such times and in such places as the International President shall determine, provided, however, one of these meetings shall be held as soon as possible after receipt of the annual audit.

b) Meetings of the General Executive Board shall be on not less than ten (10) days' notice, except for emergency meetings. Upon the receipt of the call of the General Executive Board meeting, each Board member shall within forty-eight (48) hours, advise the International Office whether he will attend.

c) A meeting of the General Executive Board may be called by petition of Board members, the combined membership of whose subordinate body or bodies represent a majority of the dues-paying members of the Organization.

Section 3. Duties and Authority

The General Executive Board shall act upon and decide on all appeals presented to it by subordinate bodies or individual members. Second only to the Convention in legislative and policy-making authority it shall act between Conventions on all matters related to the welfare of the Organization not specifically prohibited by this Constitution or restricted to action by the membership in referendum ballot and shall decide on all questions of law. The General Executive Board is hereby authorized to:

a) supervise the activities, affairs and functioning of the Organization.

b) act on the issuance or suspension of charters of subordinate bodies, as recommended by the International President.

c) establish and order compliance with such rules, regulations or procedures, consistent with this Constitution, as are required for the effective management of the affairs of the Organization.

d) establish or approve the payment of salaries, wages, expenses, allowances and other disbursements for those employees of the Organization not specifically covered by this Constitution.

e) establish such benefits as may be required to attract and retain interested and competent personnel, including but not limited to pension, welfare, vacations, holidays, severance pay, tuition or scholarship, and insurance benefits.

f) lease, buy, sell, mortgage or dispose on behalf of the Organization of any property, rights or privileges as it thinks is desirable to meet the objectives and purposes of the membership.

g) act on affiliation of the Organization, and approve the affiliation of any subordinate body, with such

International, National and local organizations as the Board believes is in the best interests of the membership.

h) decide questions of jurisdiction relating to subordinate bodies and conclude organizational and jurisdictional agreements with other labor organizations.

i) provide financial assistance from the general assets of the Organization to any subordinate body.

j) bring suit in behalf of the Organization with full authority to bind their action in such suit all members of the Organization, and to assume the costs of any legal actions in which the Organization becomes involved.

k) levy assessments for necessary revenue in accordance with this Constitution.

l) act on the merger of subordinate bodies and in this connection may conduct a referendum vote among all the members of the subordinate bodies involved.

m) establish such marks, labels or other insignia to identify the Organization or to improve the professional recognition and status of the membership.

n) appoint a person to fill a vacancy in office, where procedures are not otherwise provided in this Constitution, or the By-Laws of any subordinate body, to serve until the next regular election for that office.

o) refer questions or matters to a subcommittee of the General Executive Board or the International

Subcommittee which will decide or determine the disposition of such questions or matters, subject to action at the next meeting of the General Executive Board or Convention.

p) conduct a poll of members on such subjects and under such rules as it may decide.

ARTICLE VIII. REVENUE AND FUNDS

Section 1. International Dues

a) Commencing January 1, 1974, the financial officer of each subordinate body shall pay the International Secretary-Treasurer the following minimum amount for each member in good standing of the subordinate body, each calendar quarter:

Unit	**International Dues**
Offshore Division	$ 7.50
Government Employees' Division	$ —
Inland Subordinate Body	$ 3.75
Pilot Subordinate Body	$ 7.50
Shoreside Division	$ —

Such payment shall be accompanied by a report in a form prescribed by the International Secretary-Treasurer. A receipt shall be issued for each payment received.

b) Each subordinate body shall have the authority to fix the amount of its members' dues subject to the provisions of (c) below, but no change in such amounts shall be made except as approved by a majority vote in referendum balloting on the change.

c) The minimum annual dues which may be required by any subordinate body shall be as follows:

Unit	**Minimum Annual Dues**
Offshore Division	$ 300*
Government Employees' Division	$ —
Inland Division	$ 120
Pilot Division	$ —
Shoreside Division	$ —

Effective 10-1-1970.

Section 2. Initiation Fees (minimum)

a) Offshore Division

1) The initiation fee for an applicant who had an original license issued less than one year prior to the date of application shall be $1,000, minimum.

2) The initiation fee for an applicant who has had an original license for one year or over but less than five years as of the date of his application, military service excluded, shall be $2,000, minimum.

3) The initiation fee for an applicant who has had any license five years or over from the date of issue of the original license to the date of application, military service excluded, shall be $3,000, minimum.

b) Inland Locals

1) The initiation fee for an applicant shall be a minimum of $250 unless the applicant has

served more than one year on his license issued by the United States Authorities.

2) The initiation fee for an applicant who has served one or more years on his license issued by the United States Authorities shall be $500, minimum.

c) At least fifty (50%) percent of all initiation fees received by all subordinate bodies shall be paid to the Organization as they are received.

d) The International President may, after investigation, give dispensation to a subordinate body and waive all or part of an initiation fee.

e) Any subordinate body collecting monies from members of another subordinate body shall forward all such collections to the International Secretary-Treasurer.

Section 3. Charter Fees and Assessments

Before the issuance of any charter to a subordinate body, the applicant for a charter shall forward to the International Secretary-Treasurer a charter fee of $100 and, if required by this Constitution or the General Executive Board, an assessment for each signatory to the application. This assessment may be applied to future International Dues at the discretion of the General Executive Board.

Section 4. Other Income

Subject to applicable law and the provisions of this Constitution, actions for obtaining income may be instituted by the Convention or the General Executive Board.

Section 5. Timely Payment

International dues must be paid by each subordinate body within one month following the calendar quarter for which payment is due. If a subordinate body fails to make payment on a timely basis the International Secretary-Treasurer shall refer the matter to the International President who shall take appropriate lawful action.

ARTICLE IX. SUBORDINATE BODIES

Section 1. Application for Charter

a) Every subordinate body shall hereafter be known by the following title:

International Organization of
Masters, Mates and Pilots
———— Division, or Local No. ————

b) Except as otherwise provided in paragraph (c) hereof, whenever fifty (50) or more persons who are duly qualified, desire to form a subordinate body in this Organization, they shall make application in writing to the International Secretary-Treasurer, remitting at the same time funds for the charter and other necessary material which must be purchased from the Organization. However, before a charter can be granted, the International Secretary-Treasurer shall notify in writing all subordinate bodies spelling out the proposed jurisdiction of the proposed new subordinate body thereby giving them the opportunity to present their opposition, if any.

c) Chartering of Small Units — Whenever a group of less than fifty (50) persons who are duly qualified, desire to form a subordinate body of this Organization, they shall follow the procedure outlined in paragraph (b) of this Section, however, special conditions may be imposed for the charter of such a group.

Section 2. Consolidation of Subordinate Bodies

Should two (2) or more subordinate bodies wish to consolidate or operate as a branch or branches, they may do so by a majority vote of the voting members of each subordinate body so desiring, by referendum ballot. The ballot in such cases shall indicate the headquarters of the new consolidated unit.

Section 3. Jurisdiction

The jurisdiction of any subordinate body shall continue unless amended by Convention action. All questions of jurisdiction between subordinate bodies shall be decided by the International President whose decision may be appealed to the General Executive Board and/or any Convention.

Section 4. Government

a) Each subordinate body shall adopt By-Laws or rules governing all aspects of its operation not in conflict with this Constitution. Such By-Laws shall be adopted and amended only by a majority referendum vote.

Any Article in the By-Laws of any subordinate body conflicting with this Constitution is void and may not be enforced. No subordinate body may alter or amend any part of this Constitution.

b) The By-Laws of each subordinate body shall comply with all applicable laws and shall include provisions on the following matters:

1) Qualifications for or restrictions on membership consistent with this Constitution and uniformly administered.

2) Authorization for disbursement of funds.

3) Certified audit of financial transactions.

4) Compensation of officers and election of officers by secret referendum ballot.

5) Discipline or removal of officers for breach of trust.

6) The calling and conduct of meetings.

7) Negotiation and ratification of collective bargaining agreements and authorization for strikes.

c) The Offshore Division By-Laws shall require a secret mail referendum ballot conducted by an impartial balloting agency on the following matters of business:

i. adoption and amendment of the By-Laws

ii. dues and similar financial items

iii. election of officers

iv. recall and suspension of officers which shall only be initiated by petition signed by a two-thirds (2/3) majority of the Offshore Division Executive Council or by twenty-five (25%) percent of the members in good standing.

d) The General Executive Board may recommend to subordinate bodies additional matters which should be covered by the subordinate body's By-Laws.

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Section 5 Safeguards Against Improper Disciplinary Actions

a) The basis for charges against any member of the Organization shall be as follows:

1) Violation of the International Constitution or subordinate body By-Laws.

2) Disobedience of any lawful regulation, rules, orders, mandates of the International or the subordinate body he belongs to or within whose jurisdiction he secured employment.

3) Violation of the oath of loyalty to the subordinate body or to the Organization.

4) Secession or fostering same.

b) No member of this Organization may be fined, suspended, expelled, or otherwise disciplined except for non-payment of dues unless such member has been:

i. served with written specific charges;

ii. given reasonable time to prepare a defense;

iii. afforded a full and fair hearing by a Trial Committee selected in accordance with the By-Laws of his subordinate body; or by a Trial Committee selected by the International Subcommittee. The findings and judgment of this Trial Committee shall be effective when submitted in writing to the International Secretary-Treasurer.

c) 1) Appeals from discipline by subordinate bodies shall be made to the General Executive Board or the International Convention.

2) All appeals must be taken within fifteen days

from the date of the findings of the Trial Committee and after reasonable notice to the accused. The appellant shall file a written notice of appeal with the International Secretary-Treasurer and the notice shall clearly state that an appeal is being taken from the particular decision in a particular case.

3) Pending any appeal, the decision appealed from shall remain in full force and effect unless otherwise provided.

4) The appellate body shall fix the date when an appeal will be considered and the accused shall be given reasonable notice thereof.

5) The accused shall have the right to appear before appellate bodies and present argument on his case.

6) In the discretion of the body hearing the appeal, appeals shall be heard either on the record made before the Trial Committee or by a further hearing.

Section 6. Surrender of Union Card

Any member disciplined or expelled may be required to surrender his union card or book.

Section 7. Finances

Dues, assessments and other payments to the subordinate body shall be subject to approval by a majority of the membership voting in referendum ballot and must provide sufficient income to meet the financial obligations of the subordinate body.

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Section 8. Relationship of International Officers to Offshore and Other Fully-Formed Divisions

The International President shall be the Executive Officer of the Offshore and other fully-formed Divisions.

The International Executive Vice President shall be the Assistant Executive Officer of the Offshore and other fully-formed Divisions.

The International Secretary-Treasurer shall be the Financial Officer of the Offshore and other fully-formed Divisions.

Section 9. Investigation of Subordinate Bodies and Establishment of Trusteeships

a) The International President or any person or persons whom he may designate shall have the right to review the books and affairs of any subordinate body. All officials of subordinate bodies shall render all required assistance to facilitate such examination. Refusal of subordinate officials to cooperate shall be grounds for removal by the Organization.

b) If the International President receives information from the investigation, conducted in accordance with this Section, that there is corruption or financial malpractice within the subordinate body, or that there is a need to assure performance of a collective bargaining agreement or the duties of a bargaining representative of the subordinate body, or if the International President believes that there is a necessity of restoring democratic procedures to the subordinate body, or if the subordinate body is not carrying out the legitimate objectives of the Organization, he may appoint a Trustee with the consent of the General Executive Board by its two-thirds'

(2/3) majority pro rata vote to take charge and control of the affairs of the subordinate body.

c) The Trustee shall be authorized and empowered to take full charge of the affairs of the subordinate body, to remove any or all officers and appoint and remove temporary officers during his Trusteeship, to suspend all membership meetings and all provisions of the By-Laws, to bring charges against any member of said subordinate body or any other subordinate body to take such other action as in his judgment is necessary for the preservation of the subordinate body and its interests. The Trustee shall report from time to time on the affairs and transactions of the subordinate body to the International President. The enumeration of the above powers of the Trustee shall not be deemed to operate as a limitation on his powers which are to be construed broadly.

d) The suspended officers shall turn over all monies, books and property of the subordinate body to the Trustee, who must issue receipt for same.

e) Any member in good standing of the subordinate body may be appointed a temporary officer. He shall be bonded for the faithful discharge of his duties, satisfactory to whomever appoints him, said premium on bond shall be paid by the subordinate body.

f) When the Trustee or International President recommends self-government be restored and such recommendation is approved by the General Executive Board or Convention, the Trustee shall direct an election at such time as he may designate, any other provisions of the By-Laws notwithstanding, and following such election and installation, the Trusteeship shall terminate and the Trustee shall return all funds, property, books and papers to the appropriate officers of the subordinate body.

If, however, the charter of the subordinate body is suspended or revoked, then any balance remaining to the credit of the subordinate body shall be placed in the hands of the International Secretary-Treasurer, who shall hold it in trust for the purpose of reorganization of such subordinate body.

Section 10. Transfer of Members Between Subordinate Bodies

A member of one subordinate body who meets the qualifications for membership in another subordinate body of the Organization may transfer to that unit. If, however, the initiation fee of the new subordinate body is higher than that of the subordinate body from which he is transferring, the difference in such fees shall be paid by the member and forwarded to the Organization.

No member shall be permitted to transfer unless he is in good standing with his subordinate body with respect to dues and assessments.

Section 11. Suspension and Revocation of Charters

The charter of a subordinate body may be revoked or suspended by the General Executive Board upon the recommendation of the International President, for:

1) failure to meet any financial obligation to the Organization within sixty (60) days after it is due.

2) refusal or failure to make returns or reports required by the Organization or by Federal law.

3) refusing or neglecting to conform to or abide by any directions or decisions of the General Executive Board or the Convention.

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Section 12. Court actions and Appeals to other Authorities by Subordinate Bodies

In no case shall a subordinate body appeal to any court or other authority until it has exhausted its rights of appeal under the laws of this Organization. Any violation of this section of the International Constitution shall be cause for receivership of the subordinate body under a Trusteeship or suspension of the subordinate body's charter. The subordinate body violating this section shall be subject to all expenses and costs to the Organization.

Section 13. Individual Responsibility of any Officer, Agent, Employee or Member of any Subordinate Body

Any officer, agent, employee or member of any subordinate body who makes or authorizes or votes for, or joins in the making or authorization of any payment out of the funds of his subordinate body, or the creating of any expense, charge or lien of any nature to, or upon any of the funds or property of his subordinate body, contrary to any of the provisions of this Constitution, or contrary to any order of either the International President or the General Executive Board shall be individually liable to such subordinate body and to the Organization for the amount of such payment, expense, charge or lien and for all damage sustained by such subordinate body or the Organization, resulting from such payments or the creation of such expense, charge, or lien, and for all expenses incurred by the subordinate body, or the Organization, in the recovery of such payment, or the contesting of any such expense or lien.

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Section 14. Prohibition Against Employment of Counsel Chargeable to International

No subordinate body or no individual member of this Organization shall employ counsel chargeable to the Organization.

Section 15. Dissolution or Withdrawal of Subordinate Bodies

No subordinate body shall dissolve or withdraw from this Organization without the consent of the International Convention, or General Executive Board.

Any member in good standing in a subordinate body which has been withdrawn or dissolved or which has had its charter revoked, who can furnish satisfactory proof to the General Executive Board or its representative of his standing in his subordinate body shall be entitled to a transfer card from the Organization. With this card, which shall be furnished by the International Secretary-Treasurer with the seal of the Organization attached, he may make application to the subordinate body nearest his residence, subject to the International Constitution and to the By-Laws of the subordinate body to which he may apply.

Section 16. Referenda

The Executive Council or Committee of any subordinate body shall have the unrestricted right to send out a referendum ballot to the entire membership of that subordinate body to act upon if, in the opinion of the Executive Council or Committee, the need for such action exists.

ARTICLE X. AMENDMENT OF CONSTITUTION

Section 1. International Dues Minimums, Assessments and Amendments

a) Subsequent to the adoption of this Constitution, any future International Dues minimums, or assessments, or any Constitutional amendment shall be adopted in the following manner:

1) a two-thirds' majority pro rata vote in a Regular, Special or Constitutional Convention, and

2) approved by a majority vote of the membership voting in a secret referendum ballot.

b) The General Executive Board by its two-thirds' majority pro rata vote shall have the power to levy an emergency assessment. Such action of the General Executive Board must be ratified by a majority vote in a forty-five (45) day referendum ballot, in which all members in good standing of the Organization are eligible to vote. Such action shall be effective only until the next regular Convention.

c) The referendum ballots by the membership under Subsections (a) and (b) of this Section shall be conducted by an impartial balloting agency, elected by the majority vote of the Convention or General Executive Board whichever the case may be. The impartial balloting agency shall be under the general supervision of a duly elected International Ballot Committee, which Committee shall also be elected by either the International Convention or the General Executive Board, whichever the case may be.

Section 2. Procedures for Proposal and Adoption of Resolutions

a) Amendments or resolutions proposed by subordinate bodies, officers or delegates, which would amend the Constitution must be filed in writing with the International Secretary-Treasurer at least thirty (30) days prior to the Convention at which they are to be considered. Copies of such resolution shall be distributed to all subordinate bodies prior to the commencement of the Convention with, if possible, an estimate of the cost factors involved with the proposal.

b) The Constitution Committee may submit a proposed amendment by a majority vote of its members, to the full Convention.

Section 3. State and Federal Law

Any Article within this Constitution that is in direct conflict with any State or Federal Law shall not be enforced by the elected officers of the Organization. The General Executive Board shall have authority between Conventions to amend this Constitution as necessary to remove any conflict between its provisions and those of any applicable Federal or State law.

ARTICLE XI. OTHER MATTERS

Section 1. Bonding of Officers and Employees

All Officers and employees of the Organization and subordinate bodies who handle funds or property of the Organization shall be bonded in accordance with Federal Law. The International Secretary-Treasurer shall advise each subordinate body of its bonding requirements. To accomplish this the International Secretary-Treasurer must be furnished with a Certified Public Accountant's audit of each subordinate body' books. The expense of such bonding shall be borne by the Organization and all bonds shall be held in trust by the International Secretary-Treasurer.

Section 2. Pledge for Officers

All officers of the Organization shall, within thirty (30) days of taking office or commencing employment, sign the following pledge which shall be immediately forwarded to the International Secretary-Treasurer and filed by him:

> "I hereby pledge that I will faithfully perform the duties of the office which I shall hold; that I will observe, enforce and support the Constitution and By-Laws of the International Organization of Masters, Mates and Pilots, to the best of my ability. I believe in the democratic form of government and constitution of the United States of America, and will defend the same to the best of my ability. I further pledge to work at all times for the best interests of the members of International Organization of Masters, Mates and Pilots, so help me God."
>
> (This pledge to be adapted for representatives in foreign countries.)

Section 3. Strikes and Lockouts

a) The International President is authorized to direct a subordinate body to take a vote to accept or reject a proposed contract, either by referendum ballot or by such procedure as is outlined in the subordinate body's By-Laws.

b) Prior to a subordinate body becoming involved in a strike, lockout, boycott, lawsuit or other serious difficulty such subordinate body shall notify the International President immediately of the nature of the difficulty and the action contemplated. If the action to be taken shall involve other subordinate bodies or other labor organizations, the International President shall have the authority to modify or prohibit such action.

c) Subordinate bodies are authorized to establish programs to provide strike or out-of-work benefits in case of strike or lockout, in accordance with the subordinate body's By-Laws.

Section 4. Collective Bargaining Agreements

Subordinate bodies shall have authority to negotiate agreements affecting their locality and jurisdiction exclusively. The agreements must be made in the name of the International Organization of Masters, Mates and Pilots. No agreement shall be signed by an officer without receiving the consent of the International President. Original copies of all agreements are to be forwarded to the Organization, copies to be made and retained by the subordinate body. No subordinate body shall purport to make the Organization or any other subordinate body a party to, or refer to it as a separate entity in, any collective bargaining or other agreements without the express written consent of the International President.

Section 5. Official Publication

a) The Organization shall publish and distribute to all members an official publication which shall be known as "The MASTER, MATE AND PILOT." Such publication shall contain matters related to Organization functions, policies and activities.

b) The official publication shall be under the direction of an Editorial Board elected annually by the General Executive Board. The Board shall consist of the International Subcommittee and three members elected by the General Executive Board.

c) Every member shall have the right to fair and reasonable access to the official publication for presentation of a point of view for or against proposed amendments to this Constitution submitted to referendum, or any other matters of general membership interest, subject to reasonable rules adopted by the General Executive Board.

Section 6. Separate Counting of Subordinate Body Ballots in Any Referenda

In all elections and referenda, votes cast by members of each subordinate body shall be counted and the results published separately. The ballots and all records pertaining to the election or referenda must be preserved for one year.

ARTICLE XII. CREATING INTERNATIONAL ORGANIZATION MASTERS, MATES AND PILOTS ASSOCIATED MARITIME WORKERS LOCALS

Section 1. Eligibility

Eligibility to membership shall be any person employed

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in the maritime industry not working under the authority of a license.

Section 2. Initiation Fees, Dues, International Dues and Reinstatement Fee

The minimum initiation fee shall be $15. The minimum annual dues shall be $36. The minimum International Dues shall be paid to the International Secretary-Treasurer quarterly, not less than $1.89 per member per quarter. The reinstatement fee shall be $25 and three months' dues in advance. The minimum annual dues for unlicensed supervisory deck officers shall be $60.

Section 3. Transfer of Members to Other Locals

Associated Maritime Workers Locals shall arrange an equitable agreement for transfer of membership to other Locals, provided, however, no Associated Maritime Worker Local member shall be transferred to another Local except by paying the difference in the amount of the initiation fee which he paid to his Associated Maritime Workers Local and the initiation fee of the Local into which he is transferring.

Section 4. Joint Meetings.

Regular and Associated Maritime Locals may call joint special meetings for transaction of business affecting both Locals.

Section 5. Representation at International Conventions and International Executive Committee Meeting

During the Convention, Associated Maritime Workers Locals shall be entitled to representation based on the average International Dues paid into the International Organization during the preceding year. Associated Maritime Workers Locals shall vote only on matters pertaining to their own class of work and to elect International Officers. The Executive Officers of each Associated Maritime Workers Local, or if the Executive Officer is not available, such officer of the Local as shall be appointed by majority vote of the Executive Committee of such Local, shall be a member of the International Executive Committee with voice and vote on matters pertaining to his class of work.

ARTICLE XIII. EFFECTIVE DATE

Section 1

The effective date of this Constitution shall be January 20, 1975. Thereafter, the provisions of the previous Constitution shall become void except as otherwise provided in this Constitution.

ARTICLE XIV. AFFILIATION OF THE INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS WITH THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION

The International Organization of Masters, Mates and Pilots shall become affiliated with the International Longshoremen's Association as the "International Organization of Masters, Mates and Pilots, the International Marine Division of the International Longshore-

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men's Association," and this affiliation shall be in accordance with the following principles and safeguards

1. The International Marine Division shall be autonomous and have its own officers, subdivisions and self-government.
2. The President of the International Organization of Masters, Mates and Pilots shall be the representative of the International Marine Division on the International Longshoremen's Association Executive Council.
3. The International Marine Division will also be represented on the Executive Boards of the ILA's three existing geographical Districts: the Atlantic Coast District, the South Atlantic and Gulf Coast District, and the Great Lakes District. If the ILA establishes a Pacific Coast District, the IOMM&P will also have the right to be represented on the governing Board of that District.
4. Any maritime union, inland or offshore, which hereafter affiliates with the ILA shall become part of the International Marine Division.
5. The International Longshoremen's Association shall pay per capita tax on IOMM&P members to the AFL-CIO and this per capita tax shall be itemized separately as being made for members of the International Organization of Masters, Mates and Pilots. The IOMM&P shall pay per capita tax to the ILA.
6. At any time prior to October 1, 1975, either Organization, for any reason, may cancel the affiliation by written notice to the other, and the AFL-CIO charter and jurisdiction of the IOMM&P shall remain with the IOMM&P.

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In the event of any such cancellation, the IOMM&P shall continue to retain all of its books, records, contracts, securities, funds, property, assets, collective bargaining agreement(s) and pension, welfare, vacation and training plan(s) rights, books, records, funds, property and assets of any description whatsoever. In the event of any such cancellation, any provision of the ILA Constitution which is contrary to the above, shall not apply.

In the event there has been any transfer of members or organic merger of locals during the period that the IOMM&P has been a part of ILA, then, upon such cancellation, such transfer of members or organic merger of Locals shall be rescinded and the parties restored insofar as possible to their status quo immediately prior to July 1, 1971.

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BALLOT

PROPOSED OFFSHORE DIVISION BY-LAWS AMENDMENTS AND POLL FOR NEGOTIATING CONTRACT AMENDMENT

This ballot was authorized by the Offshore Division Executive Council meeting held in Baltimore on October 19, 1973. All members of the Council attended and all of this ballot was duly authorized by the Council in accordance with the Offshore Division By-Laws.

PROPOSITION No. 1

LIMITATION OF MEMBERSHIP

Recognizing the fear prevalent among the membership that the membership rolls may be flooded by taking new members into the Union, the Offshore Division Executive Council unanimously passed the following resolution:

• • • • •

WHEREAS, the Offshore Division By-Laws are silent on the number of applicants who may be taken into membership after the 1.5-1 job membership ratio has been reached, and

WHEREAS, the Offshore Division Executive Council wishes to ensure that the Division cannot be flooded with applicants as new members,

NOW, THEREFORE, BE IT RESOLVED that an additional sentence be added to Article II, Section 1(b) reading:

"After opening the membership rolls for the initial period, no more new members may be admitted to membership than the number of members who have relinquished active membership on a one-for-one basis."

YES ☐ **NO** ☐

PROPOSITION No. 2

REDUCED QUORUM REQUIREMENTS FOR MEMBERSHIP MEETINGS

The Council is aware that compulsory attendance at meetings is repugnant to IOMM&P members. However, the members of the Executive Council are desirous of frequent membership meetings in order to keep members abreast of Union affairs and to keep the Union officials current with membership thinking. In order to encourage more frequent meetings, the Executive Council unanimously passed the following resolution:

• • • • •

WHEREAS, Offshore Division By-Laws, Article VIII, Section 3, presently requires "not less than 25% of the membership registered for shipping, with a minimum of 15 members, shall constitute a quorum for the transaction of business," and

WHEREAS, experience has shown that a change in the percentage previously ratified by the members may be desirable,

THEREFORE, BE IT RESOLVED, that the 25% requirement be reduced to 15% with the present minimum of 15 members for a quorum remaining unchanged.

YES ☐ **NO** ☐

PROPOSITION No. 3

POLL TO NEGOTIATE CONTRACT AMENDMENT OF 30-DAY RULE

The Offshore Division Executive Council reviewed several complaints from members about the "30-day rule" and passed the following resolution calling for a poll of the entire Offshore Division membership.

• • • • •

"That a Negotiating Subcommittee be authorized to negotiate amendment of the "30-day rule" to permit return to the vessel for the remainder of his assignment in case of layup if he has indicated his intent to do so in writing at time of payoff, files his request with the payoff port, and does not accept employment under the contract, including Port Relief Officer work."

YES ☐ **NO** ☐

PROPOSITION No. 4

INCREASE REVENUE OF OFFSHORE DIVISION

The Offshore Division Executive Council made an exhaustive study of the financial condition of the Offshore Division. The letter accompanying this ballot explains in detail the bare situation. The Council voted unanimously in favor of the following resolve:

• • • • •

"Resolved: To amend the Offshore Division By-Laws to provide for the following additional membership dues: Six (6%) percent of the gross amount of each vacation benefit received for work performed on any MM&P-contracted vessel, and six (6%) percent of each vacation benefit received by every MM&P Offshore Division official.

The effective date shall be upon adoption."

READ THE IMPORTANT ACCOMPANYING LETTER EXPLAINING THE FACTS REGARDING PROPOSITION NO. 4.

YES ☐ **NO** ☐

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PROPOSITION No. 5

AMEND BY-LAWS IN ORDER TO FURTHER REDUCE EXPENSES

This Article was discussed for several hours and it was the unanimous opinion of all of the members of the Offshore Division Executive Council that the following amendments to the Offshore Division By-Laws are essential to prevent a further worsening of the financial condition of the Offshore Division and the Organization. For example, as the By-Laws now read, it can and has been argued that there must be three additional officials elected as Vice-Presidents. Further, as the By-Laws now read, the Offshore Division can find itself in the position of having to elect Field Representatives for ports already closed.

• • • • •

The Offshore Division By-Laws shall be amended wherever and in such respects as are necessary, to provide the following:

1. The three elected Vice Presidents shall not be in addition to the elected Port Agents.
2. The Vice President (Atlantic) shall be the Port Agent of the Port of New York; the Vice President (Pacific) shall be the Port Agent of the Port of San Francisco; the Vice President (Gulf) shall be the Port Agent of the Port of Galveston.
3. As economic necessity or as service to the membership may require, the Offshore Division Executive Council shall, by its majority vote, have the authority to close, reclassify or merge ports, and to designate all Field Representatives.

YES ☐ NO ☐

PROPOSITION No. 6

PILOT DIVISION TRANSFERS

The Pilot Division has requested the same transfer privileges as the Panama Canal member. The Offshore Division Executive Council unanimously passed the following resolution:

• • • • •

"Resolved: To amend Offshore Division By-Laws, Article II, Section 1(b) and Article XIV, Section 2 to provide that the rules pertaining to the transfer of Panama Canal Pilots to the Offshore Division be applied to those members of the Pilot Division who wish to return to sea."

YES ☐ NO ☐

BALLOT COMMITTEE

The Offshore Division Executive Council, at its meeting held October 19, 1973, in Baltimore, elected by acclamation, the following to the Ballot Committee for the Ratification of the Offshore Division By-Laws Amendments.

Member	Alternate Member
William K. Beach	P. J. King
Francis E. Kyser	R. Casselberry
Orion A. Larson	R. J. Soriano

• • • •

PROPOSITION No. 7

INITIATIONS

Noting that the Initiation Fee for membership in the IOMM&P has not changed in more than ten years, the Offshore Division Executive Council unanimously adopted the following resolution to make the fee more realistic and commensurate with the benefits of membership:

• • • • •

WHEREAS, there has not been any increase in the initiation fees for new members since 1963, and

WHEREAS, the average income of our members has more than doubled during that ten-year period, and

WHEREAS, the pension benefits for an eligible member have increased manifold in the ten-year period, and

WHEREAS, the vacation benefits during that period have increased as much as five times aboard certain vessels, and

WHEREAS, the welfare benefits have been vastly expanded in both the scope of benefits and the dollar value of the benefits in that ten-year period, and

WHEREAS, the improvements in working rules and conditions have greatly increased the income and shipboard comfort of our members, and

WHEREAS, the Pension and Welfare Plan death benefits increase, the widows' option, and five-year pay out provisions have vastly improved the security of our members' families;

NOW, THEREFORE, BE IT RESOLVED, that the initiation fee for a new member shall be three months' base pay as provided under the then current contract. The base pay shall be as provided for Class A-3 automated vessels. The rate of base pay shall be at the license rating held by the applicant for membership. The license rating shall be such license held by the applicant at the time of his acceptance into membership. However, if the applicant prepays his initiation fee, then the license rating shall be such license held by the applicant at the time the full pre-payment is made.

The full initiation fee must be paid before any applicant may become a new member.

YES ☐ NO ☐

VOTING INSTRUCTIONS

1. Statement on face of the RETURN ENVELOPE must be completed and signed. (Signature and Social Security Number)
2. You must put your Ballot in the Envelope marked "SECRET BALLOT"; and seal it.
3. Insert SECRET BALLOT Envelope in the RETURN ENVELOPE. SEAL; then mail.
4. Do not send checks, money orders, cash, etc., along with your ballot.
5. A duplicate ballot shall not supersede the original ballot voted.
6. In the case of lost or destroyed ballots, request forms for duplicate ballots can be obtained from any Offshore Division Union Hall.
7. **Ballots must be received by Thursday, January 10, 1974.**

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COPY RECEIVED

Robert B Fiske

UNITED STATES ATTORNEY

10/29/76